

All is Well ...!

Shehzad Saleem

Not always do our plans materialize; not always do our expectations fetch congruous results; not always do our efforts bear fruit. And then, at times we are faced with staggering circumstances: a handicapped child is born, a person dies in the prime of his youth, a flourishing business suddenly runs into great losses, a young lady becomes a widow, cruel relatives deprive their blood relations from even the basic necessities of life. The list of course is unending.

The result of all this more often than not is quite predictable: depression, continued sorrow and sometimes severe anger and rage. The unexpected brings out from within us reactions which cross limits.

The *Qur'ān* says that there may be various reasons for such untoward circumstances. While explaining one of them it says:

And sometimes you dislike a thing and [in reality] there is great welfare for you in it and sometimes you like a thing and [in reality] there is great harm for you in it. Allah knows and you know not. (2:216)

It is thus expected of a Muslim to submit to the Almighty in all circumstances with the belief that whatever has happened was best for him. We cannot always grasp the profundity of the Almighty's wisdom. Time, however, often tells how the 'untoward' happening actually positively influences the course of our life. So instead of becoming upset and frustrated we must resign to his will and wait to see how things ultimately take shape.

In short, 'all is well even if does not *seem* to end well'.

Introduction

This *sūrah* forms a pair with the preceding *sūrah* – *Sūrah Burūj*. Both have a striking similarity as both have a similar preamble and end on a similar end note.

Central Theme

The central theme of both the *sūrahs* is the same. Celestial panoramas and corporal phenomena and the attributes of the Almighty are offered to substantiate the warning of the *Qur'ān* regarding the Day of Judgment. This inevitable event must be taken seriously because, though, there seems to be a little delay, it is, in fact, a respite given to the wicked so that they can play to their heart's content. The Almighty does not rush to punish the wrong doers because His scheme is firm and no one can ever escape once seized by His wrath.

Analysis of the Contents

The contents of the *Sūrah* can be analyzed thus:

In the first four verses, it is asserted that nothing in the heavens escape the watch of the omni-present God. He has indeed appointed a guardian over each soul and can punish a culprit as and when desired according to His own ordained scheme.

In the next four verses, an invitation has been extended to all disbelievers to meditate over the mysteries of creation. Man has not been created by some rare material which is beyond the reach of Allah but by a drop of water which gushes forth from within himself. Thus, when Allah is able to make a whole person from just a drop of water, He can surely resurrect the whole mankind on the Last Day and take account from everyone.

The next two verses allude to the fact that Allah has full knowledge of what is in the hearts. All acts, however secretly conducted, shall be judged openly on the Last Day and no might or a helper will a person find at his disposal to escape the judgment pronounced.

In verses eleven to fourteen, a combination of the celestial and the terrestrial phenomena is again mentioned to reinforce the warning of the *Qur'an* regarding the Day of Resurrection lest man should take it a pleasantry when it is inevitably going to take place.

In the last three verses, the Prophet Muhammad (sws) is consoled that whatever the disbelievers are planning will be turned against them. The Almighty has laid down a firm plan which shall soon be executed to seize them and to bring them to justice.

سورة الطارق

وَالسَّمَاءِ وَالطَّارِقِ وَمَا أَدْرَاكَ مَا الطَّارِقُ النَّجْمُ النَّاقِبُ إِنَّ كُلُّ نَفْسٍ لَمَّا
عَلَيْهَا حَافِظٌ فَلْيَنْظُرْ الْإِنْسَانُ مِمَّ خُلِقَ خُلِقَ مِنْ مَّاءٍ دَافِقٍ يَخْرُجُ مِنْ بَيْنِ الصُّلْبِ
وَالْتَرَائِبِ إِنَّهُ عَلَى رَجْعِهِ لَقَادِرٌ يَوْمَ تُبْلَى السَّرَائِرُ فَمَا لَهُ مِنْ قُوَّةٍ وَلَا نَاصِرٍ
وَالسَّمَاءِ ذَاتِ الرَّجْعِ وَالْأَرْضِ ذَاتِ الصَّدْعِ إِنَّهُ لَقَوْلُ فَصْلٍ وَمَا هُوَ بِالْهَزْلِ إِنَّهُمْ
يَكِيدُونَ كَيْدًا وَأَكِيدُ كَيْدًا فَمَهْلُ الْكَافِرِينَ أَهْمُهُمْ رُويًا (١-١٧)

Meaning of the *Sūrah*

The sky and those which appear in the night—and what do you understand what those which appear in the night are? Shinning stars—bear witness that indeed there is no soul over which there is no guardian. (1-4)

So, let man ponder on what he has been created from. He has been created from a spurting fluid that comes from between the bones of the back and the chest. Indeed He [– the Almighty –] is able to resurrect him. (5-8)

On that day, when all secrets will be probed, then, neither will he have any might nor will he find any helper. (9-10)

This sky brimful of rain and the earth with splits bear witness that this is a decisive word and it is no jest. (11-14)

They are devising a plan and I am also scheming a plan. So, leave the disbelievers; leave them for a while. (15-17)

Explanation of the *Sūrah*

وَالسَّمَاءِ وَالطَّارِقِ وَمَا أَدْرَاكَ مَا الطَّارِقُ النَّجْمُ النَّاقِبُ إِنَّ كُلَّ نَفْسٍ لَمَّا عَلَيْهَا حَافِظٌ (٤-١)

The sky and those which appear in the night—and what do you understand what those which appear in the night are? Shinning stars—bear witness that indeed there is no soul over which there is no guardian. (1-4)

Heaven with its forts is offered as an evidence for the impending Day of Judgment in the preceding *Sūrah Burūj*, likewise, shinning stars and the all encompassing sky find mention in this *sūrah* to substantiate the claim of the *Qur'ān* that immediately follows the explanation of the word '*Tāriq*'. The literal meaning of this word is that which comes in the night but, in this *sūrah*, it alludes to a shinning star which appears in the night as endorsed by the following phrase '*النَّجْمُ النَّاقِبُ*' (shining star). The question '*وَمَا أَدْرَاكَ مَا الطَّارِقُ*' (what do you understand what those which appear in the night are?) is posed to augment the significance of the evidence that has just been presented. The implication being that this evidence is of such importance that the Almighty has offered it to substantiate His warning lest one should take it lightly.

The phrase '*النَّجْمُ النَّاقِبُ*' (shining star) does not imply any particular star. Rather, it has been used to allude merely to the genre all stars belong to in the same way it is referred to in *Sūrah Nahal* by the words '*وَبِالنَّجْمِ هُمْ يَهْتَدُونَ*' (By the stars they guide themselves. (16:16)). It is, however, to be noted that the adjective '*النَّاقِبُ*' here has a special connotation that must be appreciated: if the Powerful and Wise Creator can cause the light of stars to reach every corner of this earth without any medium, He can surely catch any transgressor whenever He wants to although there seems to be no apparent means. This has been expressed more clearly in the verse '*إِنَّ كُلَّ نَفْسٍ لَمَّا عَلَيْهَا حَافِظٌ*' (Indeed no soul is there over which there is no guardian) and is

indeed the claim for which all the previous oaths have been taken. In a nutshell, the Almighty has offered something visible to our eyes to substantiate the existence of that which is hidden—the guardian that He has appointed over each soul.

Another aspect that springs to mind when one ponders on the combination of the evidence—the sky and the shining star—that the *Qur'ān* has put forth is that the Creator has made a special arrangement for the management of the affairs of this world. The *Qur'ān* at various instances has mentioned that forts are erected in these stars, where angels are stationed so that no intruder, without the permission of the Master, could ever reach the prohibited area. But, in case, he tries to, he will be attacked with meteorites as a punishment. This is a reference to Satan and his accomplices who try to creep up in the skies to overhear divine commandments. This bombardment is indeed a manifestation of Allah's wisdom and authority with which He administers the affairs of this world and leaves nothing to others – taking control of each and every thing in His hand. In addition, it implies that the creation of this well-organized and well-managed world has a special purpose which shall be achieved when some, who lived their lives according to the values set by their Master, are rewarded and the remaining, who are quite averse to the scheme of the Almighty, are punished.

The usage of 'لَمَّا' in verse 4 is somewhat rare and that is why it has been an issue of debate among the grammarians. This writer has documented his research findings under the explanation of verse 111 of *Sūrah Hūd* and verse 35 of *Sūrah Zukhruf*.

فَلْيَنْظُرِ الْإِنْسَانُ مِمَّ خُلِقَ خُلِقَ مِنْ مَّاءٍ دَافِقٍ يُخْرَجُ مِنْ بَيْنِ الصُّلْبِ وَالتَّرَائِبِ إِنَّهُ
عَلَى رَجْعِهِ لَقَادِرٌ (٨-٥)

So, let man ponder on what he has been created from. He has been created from a spurting fluid that comes from between the bones of the back and the chest. Indeed He [- the Almighty -] is able to resurrect him. (5-8)

These verses urge a person to accept his true position and appreciate the sagacity and wisdom of his Creator with which He has set meticulously the details of each phenomenon that takes place within himself and outside in the world. Besides, these

phenomena are not now beyond His authority since it is He who initially put them into process. So, He can easily override a plan initially devised by Him and resurrect man on the Last Day to account.

It is, perhaps, the strongest opposition that the *Qur'an* faced from the disbelievers that how Allah would be able to bring a person back to life once he is soil at best. The *Qur'an* did not refute their claim by far-fetched philosophical theories. On the contrary, it invited them to consider as simple an evidence as the creation of man for the first time. *Sūrah 'Abas* also presents this evidence in the following words:

قَتَلَ الْإِنْسَانَ مَا أَكْفَرَهُ مِنْ أَيِّ شَيْءٍ خَلَقَهُ مِنْ نُطْفَةٍ خَلَقَهُ فَقَدَرَهُ ثُمَّ
السَّبِيلَ يَسَّرَهُ ثُمَّ أَمَاتَهُ فَأَقْبَرَهُ ثُمَّ إِذَا شَاءَ أَنشَرَهُ (٨٠: ١٧-٢٢)

Woe to man! How ungrateful he is. From what he has been created? From a sperm-drop: He [the Almighty] created him and then set for him a time frame [to be a complete human being], then made his way easy for him and then caused death to him and had him put in his grave. Then, when He wishes to, He will raise him again [to account]. (80:17-22)

Another important point which must be deliberated upon is about the nature of the material from which man has been created and is described by the words 'خُلِقَ مِنْ مَّاءٍ دَافِقٍ' (he has been created from a spurting fluid). The *Qur'an* explains that it is just a drop of water that comes from between the bones of the back and the chest and that it is not some rare material beyond the reach of the Almighty. It is indeed His set scheme by which this drop is made to gush forth and then to transform gradually into a complete human being. This great demonstration that takes place within a person evidently shows that the Almighty is surely able to restore all mankind to life on the Last Day. *Sūrah Infjār* delineates this process in the following words:

يَا أَيُّهَا الْإِنْسَانُ مَا غَرَكَ بِرَبِّكَ الْكَرِيمِ الَّذِي خَلَقَكَ فَسَوَّاكَ فَعَدَلَكَ فِي
أَيِّ صُورَةٍ مَا شَاءَ رَكَّبَكَ كَلَّا بَلْ تُكذِّبُونَ بِالذِّينِ (٨٢: ٦-٩)

O man, what made you to be indifferent to your Lord the Most Beneficent, Who made a sketch of you, then fashioned, then completed you in every aspect and gave you whatever features He wished to. Nay, you [actually want to] deny the Judgment. (82:6-9)

Finally, from a linguistic perspective: it is mentioned here that though the invitation expressed in 'فَلْيَنْظُرِ الْإِنْسَانُ مِمَّا خُلِقَ' (So let man ponder on what he has been created from) is extended to all human kind, the immediate addressees are no doubt the *Quraysh* who would raise such absurd objections to make a mockery of the warnings of the *Qur'an*.

يَوْمَ تُبْلَى السَّرَائِرُ فَمَا لَهُ مِنْ قُوَّةٍ وَلَا نَاصِرٍ (٩-١٠)

On that day, when all secrets will be probed, then, neither will he have any might nor will he find any helper. (9-10)

The nature of the court that will be established on the Last Day is mentioned in 'يَوْمَ تُبْلَى السَّرَائِرُ' (On the day, all secrets will be probed). Unlike the courts of this world, all secret acts shall be investigated in the court of the Hereafter. So much so, even ill intentions will be scrutinized and brought to judgment. The Almighty has made an arrangement to record all acts no matter how secretly conducted or thought of. He will ensure that sincerity is separated from insincerity and good is separated from evil and that ultimate justice is done. Another characteristic of that court will be that every part of our body shall be called to be a witness against us. They will speak the truth unraveling all of our secrets which remained hidden from the eyes of the world.

Perhaps, the main reason that justice continues to elude us in this world is that people of power and good connections always manage to get away with the crimes they commit. On the Last Day, a person shall neither have any power nor shall he find any helper to turn towards in order to have the game turned into his favor. Thus, an environment perfectly suitable for sheer justice will be established and each person will be judged on individual basis.

وَالسَّمَاءِ ذَاتِ الرَّجْعِ وَالْأَرْضِ ذَاتِ الصَّدْعِ إِنَّهُ لَقَوْلٌ فَصْلٌ وَمَا هُوَ بِالْهَزْلِ (١١-١٤)
This sky brimful of rain and the earth with splits bear witness that this is a decisive word and it is no jest. (11-14)

Another thought provoking evidence is put forth to rebut the doubts raised by the disbelievers about resurrection. The implication being that how creating life from death for the second time can be a hard task for the Master when He is able to turn the dead soil around them into lush green fields time and again. These phenomena that they observe daily should serve as an eye-opener warning for their un-called for attitude that they have adopted toward the word of their Creator.

The *Qur'ān*, at various other instances, has also reinforced its claim using different expressions that bringing mankind to life again is not improbable whatsoever. For example, in *Sūrah Anbiyā*, such doubters are reprimanded in the following words in order to wake them from their deep slumber:

أَوَلَمْ يَرَى الَّذِينَ كَفَرُوا أَنَّ السَّمَاوَاتِ وَالْأَرْضَ كَانَتَا رَتْقًا فَفَتَقْنَاهُمَا
وَجَعَلْنَا مِنَ الْمَاءِ كُلَّ شَيْءٍ حَيٍّ أَفَلَا يُؤْمِنُونَ (٣٠:٢١)

Is it that those who reject the Day of Judgment have not seen that the sky and the earth are closed. We create from its water every kind of plant. Still, will they not believe. (21:30)

The disbelievers are cautioned that the warnings of the *Qur' ān* must not be ridiculed. They must pay heed to the calls of sense and reason or they will have to face grievous consequences of their unbecoming behavior because they are making a mockery of a holy message from their Creator, which is conclusive and decisive.

إِنَّهُمْ يَكِيدُونَ كَيْدًا وَأَكِيدُ كَيْدًا فَمَهْلُ الْكَافِرِينَ أَمَهُلُهُمْ رُوَيْدًا (١٥-١٧)
They are devising a plan and I am also scheming a plan. So, leave the disbelievers; leave them for a while. (15-17)

The Prophet Muhammad (sws) is consoled that the questions

raised by his addressees are not for the sake of understanding the truth itself. They are in fact scheming to make fun of the word of Allah. The Prophet (sws) need not worry that his addressees are challenging him to do some miracle to authenticate his status which he is not given permission to do by the Almighty because such doubts are not genuine but a means to evade the message. Their obvious objective is to keep the general public away from the Prophet (sws) so that they could be able to retain their political authority. Their sin is, therefore, twofold and their punishment shall also be twofold. The Almighty has just laid down a firm scheme and will soon execute it to seize them such that no transgressor will be able to escape. Thus, this *Sūrah* conveys a similar idea as has been suggested by the previous *Sūrah Burūj* in the words 'وَاللَّهُ مِنْ وَرَائِهِمْ مُحِيطٌ' (Allah is surrounding them from behind). Since the Almighty is surrounding them from all sides with a firm scheme, it is not to be feared that they will escape His grip. The Prophet (sws) is, therefore, instructed to give them a little respite so that they can play to their hearts' content. The implication being that this additional period of reprieve awarded to them will leave them with no plea and then the Almighty will cause them to enter the raging, ever hungry hellfire. The last verse is indeed a warning sounded to the disbelievers that their time is due to end very soon and this period of respite is not going to be too long.

The point that must be appreciated here is that the Prophet (sws) is being asked to give them a little more time, which ultimately means that the Almighty has finally given their fate in the hands of the Prophet (sws). Allah, however, wants him to allow them a further period of respite before finally they meet their own-chosen destiny.

(Translated from '*Tadabbur i Qur'ān*' by Jhangeer Hanif)

Scriptures

Original Sin or Purity (Innocence)

Abdus Sattar Ghauri

Islam does not accept the belief of ‘*original sin*’. Its main concern is the ‘*acquired sin*’ and not the ‘*original sin*’. According to Islam ‘sin’ is neither a hereditary disease that is transferred from a father to his son through the reproductive system nor is sin like a rank or a title that can be passed from an older to a younger person of the family. We can be said to have committed a ‘sin’ only when we ourselves perpetrate some unlawful, unclean, or prohibited act actually and physically; being in full control of our mental capacity; without any external compulsion or pressure; with our free will; and with our own independent guilty intention: or when we refrain from or escape some lawful duty or obligation. It can also be interpreted as ‘disobedience to God’s Commandments’. There is a maxim of the legal parlance: ‘*An act does not make a man guilty unless there be guilty intention*’. To some extent it covers the theme.

Guiltless Birth of a Child according to Islam

A human being is born without any sin (guiltless or innocent) and he remains such unless he intentionally commits a sin (i.e. disobeys God’s commandments). The Prophet of Islam (sws) is reported to have said, ‘*Every child is born on **fitrah** ie. ‘nature’ or ‘norm’.*¹ *It is his parents that corrupt him*’. There is another tradition of the Prophet of Islam (sws) in *Musnad Ahmad*:

Of course, my Sustainer says: ‘No doubt I created My

1. It is not the same as ‘on His Image’. What image can be assigned to *Allah* when there is none ‘Like unto Him’. It rather means, chaste, pure, and innocent.

servants ‘*Hunafā’a*’ (ie. men of pure faith), all of them, and then came to them the devils; so they led them astray from their pure faith, and they made upon them unlawful which I had made lawful for them, and they ordered them to make companions with Me for which there exists no logic or evidence’.

The *Qur’ān* says:

So set your face to the religion, a man of pure faith²— God’s original upon which He originated mankind³. There is no changing God’s creation.⁴ That is the right religion; but most men know it not’.⁵

A renowned commentator of the *Qur’ān* of the twentieth century, *Imām Amīn Aḥsan Iṣlāhī*, has well explained these verses:

2. ie. without resorting to any other way of life or religion.

3. ie. the genuine and inbuilt nature of every human being on which it is born, is the true faith that there does not exist any companion with Allah Almighty and it is only He Whom the humankind is to obey and worship. Upon his birth every one is quite pure from sin.

4. Nobody can change, and nobody should try to change, and it is not lawful for anybody to change, the creational design of Allah —He is the only Creator and the only Lord; and everyone else in the heavens or on earth is His servant and His creation and is bound to act in accordance with the injunctions of Allah. A human being should neither become a god nor should he assign the qualities of Allah to someone other than Him.

5. A. J. Arberry, *The Koran Interpreted*, Oxford University Press, 1983, XXX: 30, p. 414. Another translation says: ‘So keep yourself exclusively on the way, the creational law of God according to which He created man with the quality of choosing right or wrong. There is no altering of God’s creation. This is the supreme law. But most men do not understand’, (*Aḥmad Alī, Al-Qur’ān*, Akrash Publishing, Karachi, 1995 p. 345). Muḥammad Asad renders it as: ‘And so, set thy face steadfastly towards the [one ever-true] faith, turning away from all that is false, in accordance with the natural disposition which God has instilled into man: [for,] not to allow any change to corrupt what God has thus created – this is the ever-true faith; but most people know it not.’ (*The Message of the Qur’ān*, p. 621).

The Almighty Allāh has created humankind in the best design and best nature. He bestowed upon him the capacity of discriminating between vice and virtue, right and wrong, and endowed him with the urge for adopting virtue and eschewing vice. But this human nature is not like the instinct of the animals that a human being may not turn away from it. He rather has a choice of his own. That's why he sometimes becomes so blind in pursuit of his materialistic ambitions and worldly attractions that in spite of having complete sense of right and wrong, he not only follows the wrong but also formulates theories in its favour.

What is then the rationale of the revealed guidance? It is not because he had no sense of distinguishing between right and wrong. It is rather because he was prone to some misconceptions due to his shortcomings. Moreover, he did not have the capacity of understanding all the accessories and repercussions of the basic principles of nature. So the Almighty Allah had to raise up messengers among them for their proper guidance. The teachings of these messengers are based on the fundamentals that have been entrusted to human beings. *So those who were of pure and undefiled nature, took the teachings of the messengers as the voice of their own conscience* [stress added]. But those who had defiled their nature, stood against it. Of course, in the heart of their hearts, they also conceded that the messengers were true. It is due to this that the *Qur'ān* has been called 'Reminder', because it reminds us of our latent, innate and inherent data to which we willingly have turned a deaf ear.⁶

There is an in-built mechanism in human beings to discriminate and differentiate between right and wrong and to choose the right or wrong way of life for themselves. The *Qur'ān* asserts:

6. *Imām Amīn Aḥsan Iṣlāḥī, Tadabbur-i-Qur'ān, Fārān Foundation, Lahore, vol. 5, 1977, p. 92 f.*

Verily we have created man of the mingled seed of both sexes that we might test him: and we have made him to hear and to see. We have surely directed him in the way; whether he be grateful or ungrateful.⁷

In its 91st chapter named 'The Sun', the *Qur'ān* says that Allah has inspired the human soul [the significance of] sin and godliness:

[I swear] by the soul and Him who balanced it, And breathed into it its wickedness and piety, Blessed now is he who hath kept it pure, And undone is he who corrupted it!⁸

A similar theme has been asserted in chapter 90th of the *Qur'ān* which is as follows:

And We have guided him on the two paths? But he has not attempted the steep! What has let you know what is the steep? Setting free of bondmen, or feeding on a day of famine An orphan of kin, Or a destitute [person] downtrodden. And then has become one of those who have believed and who counsel each other to endurance and to compassion.⁹

Under the present heading we have so far seen that:

1. According to Islam every child is born free of sin.
2. It has been endowed with the capacity to distinguish between right and wrong.
3. Allah has managed to strengthen this capacity (conscience) externally through His messengers and the scriptures. It is to

7. George Sale, *Alkoran of Mohammed*, Frederick Warne & Co., London & NY, na, p.432, LXXVI: 2,3.

8. J.M.Rodwell, *The Koran translated from the Arabic*, JM Dent & Sons Ltd., London, 1943, XCI: 7-10, p. 38. M. Marmaduke Pickthall has rendered it into English as: 'And inspired it [with conscience of] what is wrong for it and [what is] right for it.' (P. 410).

9. Richard Bell, *The Qur'ān Translated*, Edinburgh: T. & T. Clark, 1937, XC: 10-11, p. 657.

afford him exact, unambiguous, and indubious guidance.

4. Even then if someone chooses to commit a sin of his own free will, he himself is answerable for that. (As the Bible says, ‘*God will require it of him*’.)

Natural Justice Demands that Everyone be Answerable for his Own Wrongs and not for Others’ Misdeeds

It is recorded in Jeremiah that everyone will be meted out retribution for his own sins. It simply means that nobody can bear the burden of others’ crimes.

When that time comes, people will no longer say, ‘The parents ate the sour grapes, But the children got the sour taste.’ Instead whoever eats sour grapes will have his own teeth set on edge; and everyone will die because of his own sin. (...) I will forgive their sins and I will no longer remember their wrongs. I, the Lord, have spoken.¹⁰

The book of Deuteronomy asserts that father shall not be held responsible for the son’s sins and *vice versa*:

Fathers shall not be put to death for their children, nor children for their fathers; only for his own guilt shall a man be put to death.¹¹

Isaiah also reiterates the theme in the following words,

Woe to them! They have brought disaster upon themselves. Tell the righteous it will be well with them, for they will enjoy the fruit of their deeds. Woe to the wicked! Disaster is upon them! They will be paid back for what their hands have done.¹²

2Kings, XIV: 6, while reproducing this verse, changes the last clause as: ‘*each one shall die of his own sin.*’¹³

10. Good News Bible, Jer. XXXI: 29,30,34, p. 765.

11. The New American Bible, Thomas Nelson Publishers, London, 1991, Deu. XXIV: 16, p. 181; and 2 Chronicles, XXV: 4, p. 395

12. NIV, International B Society, New Jersey, 1984, Isaiah, III: 9-11, p.717.

13. The New American Bible, 2Kings, XIV: 6, p. 335.

The same theme has been asserted by Ezekiel in fair detail. I have inserted some brief footnotes to it on the spot. It would be advisable that they be studied carefully side by side with the text to understand the theme properly:

The Lord spoke to me and said: 'What is this proverb people keep repeating in the land of Israel? *'The parents ate the sour grapes, But the children got the sour taste* [stress added].' "As surely as I am the living God," says the Sovereign Lord, "You will not repeat the proverb in Israel any more."¹⁴ The life of every person belongs to me, the life of the parent as well as that of the child. *The person who sins is the one who will die* [stress added].¹⁵

"Suppose there is a truly good man, righteous and honest. He doesn't worship the idols of the Israelites or eat the sacrifices offered at forbidden shrines. He doesn't seduce another man's wife or have intercourse with a woman during her period. He doesn't cheat or rob anyone. He returns what a borrower gives him as security; he feeds the hungry and gives clothing to the naked. He doesn't lend money for profit. He refuses to do evil and gives an honest decision in any dispute. Such a man obeys my commands and carefully keeps my laws. He is righteous, and he will live," says the Sovereign Lord.¹⁶

14. It clearly shows that even the idea is detestable to God.

15. What does this 'The person who sins is the one who will die' mean? Obviously it means that everyone is personally responsible for his deeds. Every reasonable person would take it in the same sense. The New Oxf Annotated B has observed similarly, giving it the heading, Individual responsibility'. It remarks: 'It is human to blame someone else for one's plight; the exiles did this, blaming their ancestors for their misfortunes (Jer. 31.27-30) presumably based on the covenant provision in Ex. 20.5. Ezekiel points out that the blame rests directly upon themselves.' [The New Oxford Annotated B, Ed. Bruce M. Metzger, etc, NY, Oxford University Press, 1989, p. 1077 (OT)]. The word 'die' can by no means, mean 'natural or physical death'. It means 'suffer for one's sin or undergo some punishment for it.

16. 'He is righteous, and he will live' can obviously mean that whosoever acts virtuously, would get its reward, and not anyone else.

“Then suppose this man has a son who robs and kills, who does any of these things that the father never did. He eats sacrifices offered at forbidden shrines and seduces other men’s wives. He cheats the poor, he robs, he keeps what a borrower gives him as security. He goes to pagan shrines, worships disgusting idols, and lends money for profit. Will he live? No, he will not. He has done all these disgusting things, and so he will die. He will be to blame for his own death.¹⁷

“Now suppose this second man has a son. He sees all the things his father practised, but does not follow his example. He doesn’t worship the idols of the Israelites or eat the sacrifices offered at forbidden shrines. He doesn’t seduce another man’s wife or oppress any one or rob any one. He returns what a borrower gives him as security. He feeds the hungry and gives clothing to the naked. He refuses to do evil and doesn’t lend money for profit. He keeps my laws and obeys my commands. *He will not die because of his father’s sins* [stress added], but he will certainly live.¹⁸ His father, on the other hand, cheated and robbed, and always did evil to every one. *And so he died because of the sins he himself had committed* [stress added].

“But you ask: Why shouldn’t the son suffer because of his father’s sins? The answer is that the son did what was right and good. He kept my laws and followed them carefully, and so he will certainly live. *It is the one who sins who will die. A son is not to suffer because of his*

17. ‘Will he live? No, he will not. He has done all these disgusting things, and so he will die. He will be to blame for his own death’. It again means that everybody is himself responsible for his own sins and nobody else can take his sins upon him, nor he can shift his sins to someone else; as the natural justice demands.

18. ‘He keeps my laws and obeys my commands. He will not die because of his father’s sins, but he will certainly live’. How explicitly and repeatedly the same theme is being expressed. It is the ‘Law’ forever and for everyone. Jesus also did not come to cancel the ‘Law’; he rather came to accomplish it.

father's sins, nor a father because of the sins of his son [stress added]. A good man will be rewarded for doing good, and an evil man will suffer for the evil he does.¹⁹

“If an evil man stops sinning and keeps my laws, if he does what is right and good, he will not die; he will certainly live. All his sins will be forgiven,²⁰ and he will live, because he did what is right. Do you think I enjoy seeing an evil man die?” asks the Sovereign Lord. “No, I would rather see him repent²¹ and live.²²

“But if a righteous man stops doing good and starts doing all the evil, disgusting things that evil men do, will he go on living? No! None of the good he did will be remembered. He will die because of his unfaithfulness and his sins.²³

“But you say, ‘What the lord does isn’t right.’ Listen to me, you Israelites. You think my way of doing things²⁴

19. What Ezekeil says, is in accordance with all the tenets of natural justice and equity. Any thing against it is unnatural and detestable. Any reasonable and just person would not endorse and act so unjustly. How can it be claimed that God, the Just, rather Who is the Source of all Justice and equity, would violate it! It is not fair. It is cruelty. Who can even conceive God act so ruthlessly!

20. i.e. God shall Himself forgive him without killing some innocent person in his place; because it would be against all canons of justice and equity; and cannot be expected from the Source and Maintainer of justice throughout the universe.

21. God says: ‘I would rather see **him** repent’. It naturally means that He would like only the sinner to repent of himself. He would not like to catch hold of and put to death some other innocent person to redeem this sinner from his sins. We would not like to do it ourselves; how can we expect the Just Lord act so unjustly!

22. This is natural. This is reasonable. If no hope of forgiveness, no ray of light, no room for repentance, be left; what a poor person would do! He would never abstain from wrongdoing. He would become desperate, a menace for society. The world would become a place not worthy to live. It would become void of peace and security; a living hell! How miserable!

23. i.e. the award depends on one’s final actions and intentions.

24. It explains God’s **right** ‘way of doing things’: everyone is

isn't right? It is your way that isn't right. When a righteous man stops doing good and stops doing evil and then dies, he dies because of the evil he has done. When an evil man stops sinning and does what is right and good, he saves his life²⁵. He realizes what he is doing and stops sinning, so he will certainly not die, but go on living. (...).

“Now I, the Sovereign Lord, am telling you Israelites that *I will judge each of you by what he has done.*²⁶ *Turn away from all the evil you are doing, and don't let your sin destroy you. Give up all the evil you have been doing, and get yourselves new minds and hearts. Why do you Israelites want to die? I do not want anyone to die*²⁷ [stress added], “ says the Sovereign Lord. “Turn away from your sins and live.”²⁸

responsible for his own acts unless he himself repents, 'turns away from all the evil he has been doing' and 'gives up all the evil he has been doing'. The burden of one's acts is non-transferable towards someone else.

25. 'When an evil man stops sinning (...), he saves his life.', here, does not mean that he will be physically spared from death. No, physical death he is bound to taste. But it simply means that no punishment will be inflicted upon him. Similarly '(...) he dies because of the evil he has done.' does not here mean that physical death will be incurred upon him. No, the question here is not that of a physical death. But it simply means that he will be meted out retribution proportionate to his own sin.

26. How clear this 'I will judge each of you by what he has done' is! And it is natural justice. If retribution be meted out upon me for the sins of my father, it is not justice. It is simply a cruelty. It is unconceivable that 'God's Law' can be so unjust, cruel and blind! That's why the Lord has explained His way of judgement, which is in accordance with all the canons of justice and equity.

27. How encouraging and hopeful are God's word: 'Turn away from all the evil you are doing, and don't let your sin destroy you. Give up all the evil you have been doing, and get yourselves new minds and hearts. Why do you Israelites want to die? I do not want anyone to die. Turn away from your sins and live'. How miserable and disappointing it would have been, if God had not afforded us this brilliant hope! O my Merciful and Beneficent Lord! I am thankful to You from the core of my heart for providing me this encouraging and brilliant hope.

28. Good News Bible, Ezekiel, XVIII: 1-32, pp. 815 f.

Jesus did not come to change the ‘Law’

As regards the NT, first of all it is to be noticed that Jesus never and nowhere claimed to change, cancel, or abrogate the OT. He rather exclusively and unequivocally asserted, quite contrary to it as recorded in the Gospel according to Matthew:

“Do not think that I came to abolish the Law or the Prophets²⁹; I did not come to abolish, but to fulfil. “For truly I say to you, until heaven and earth pass away, not the smallest letter or stroke³⁰ shall pass away from the Law; until all is accomplished. *Whoever then annuls one of the least of these commandments, and so teaches others* [stress added],³¹ shall be called least in the kingdom of heaven; but whoever keeps and teaches them, he shall be called great in the kingdom of heaven.³²

Similar words have been repeated in the Gospel According to Luke as well:

“The Law and the Prophets were proclaimed until John; since then the gospel of the kingdom of God is preached, and everyone is forcing his way into it. “But it is easier for heaven and earth to pass away than for one stroke of a letter of the Law to fail.³³

29. In Jesus’s days there existed only the Jewish Bible. It consisted of the OT books of the present day Bible. Its arrangement was also different. It had three parts: (i) **T**orah (Law); (ii) **N**ebiim (Prophets); (iii) **K**etubim (Writings). Joining their first letters together it was called Tenakh (from T+N+K). the 3rd portion consisting of poetry, history books etc was considered less important. Jesus here says that he has not come abolish the OT.

30. The NASB has entered a footnote here, ‘Lit., one iota (yodh [which is the smallest letter of the Hebrew alphabet]) or one projection of a letter (serif)’, and has referred to Matt. 24:35, which is: ‘Heaven and earth will pass away, but my words shall not pass away’. (p. 5).

31. It should be particularly noticed how meticulously the Lord has asserted that not even ‘one of the least of these commandments’ can be annulled, changed or abrogated.

32. The NASB, Matthew, V: 17-19, p.5.

33. The NASB, Luke, XVI: 16-17, p. 107.

It is Incumbent on Everyone to Follow the ‘Law’

It is recorded in the Gospel according to Mark that people should follow the Law of God and not the man-made rules:

‘(...). Vainly they worship me, when teaching human regulations as doctrines.’ You let go of God’s commandments to cling to human tradition.” He added, “How well you frustrate the Law of God to observe your own tradition’.³⁴

Matthew has noted the similar theme in his gospel in these words:

Why do ye also transgress the commandment of God by your tradition? (...). Thus have ye made the commandment of God of none effect by your tradition. Ye hypocrites, Well did Esaias prophesy of you, saying, This people draweth nigh unto me with their mouth, and honoureth me with *their* lips; but their heart is far from me. But in vain they do worship me, teaching *for* doctrines the commandments of men.³⁵

Moses has cursed those who do not act according to the ‘Law’, as is reproduced below:

‘Cursed is he who does not confirm the words of this law by doing them.’ And all the people shall say, ‘Amen.’³⁶

Man is Born Free of Sin (and not with some Original Sin)

It is recorded in the Gospel of Mark that Jesus believed the children to be born free of sin and it is they to whom belongs the Kingdom of God:

Some people brought children to Jesus for him to place his hands on them, but the disciples scolded the people. When

34. The Revised Berkeley Version, The Gideons International, Zondervan Publishing House, 1974, Mark, VII: 7-9, p. 742.

35. KJV, Matthew, XV: 3, 6-9, p.16.

36. New American Standard Bible, Cambridge Univ Press, 1977, p. 262.

Jesus noticed this, he was angry and said to his disciples, “Let the children come to me, and do not stop them, because the kingdom of God belongs to such as these. *I assure you that whoever does not receive the Kingdom of God like a child will never enter it* [stress added].” Then he took the children in his arms, placed his hands on each of them, and blessed them.³⁷

Matthew has also recorded this theme in his gospel at two different places. One of them is:

At that time the disciples came to Jesus, asking, “Who is the greatest in the Kingdom of heaven?” So Jesus called a child, made him stand in front of them, and said, I assure you that unless you change and become like children, you will never enter the Kingdom of heaven. The greatest in the Kingdom of heaven is the one *who humbles himself and becomes like this child* [stress added]. And whoever welcomes in my name one such child as this, welcomes me.³⁸

Luke has recorded a similar event in his gospel:

People even brought babies to him, for him to touch them; but when the disciples saw this they scolded them. But Jesus called the children to him and said, ‘Let the little children come to me, and do not stop them; for it is to such as these that the Kingdom of God belongs. In truth I tell you, anyone who does not welcome the Kingdom of God like a little child will never enter it.’³⁹

The above evidence makes it abundantly clear that according to Jesus children are innocent and free from sin.

37. The Good News B, Mark, X: 13-16.

38. The GNB, Matthew, XVIII: 1-5, p. 25. A similar event has also been recorded in this gospel in chapter XIX: 13-15.

39. The New Jerusalem B, Darton, Longman & Todd Ltd, London, Printed at Macmillan India Press, Madras, 1993, Luke, XVIII: 15-17, p. 1720.

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا فَإِذَا بَلَغَ أَجْلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَى عَدْلٍ مِنْكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَلِكَ يُوعِظُ بِهِ مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا وَيَرْزُقْهُ مِنْ حَيْثُ لَا يَحْتَسِبُ وَمَنْ يَتَوَكَّلْ عَلَى اللَّهِ فَهُوَ حَسْبُهُ إِنَّ اللَّهَ بَالِغُ أَمْرِهِ قَدْ جَعَلَ اللَّهُ لِكُلِّ شَيْءٍ قَدْرًا وَاللَّائِي يَتَسَنَّ مِنْ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةَ أَشْهُرٍ وَاللَّائِي لَمْ يَحِضْنَ وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا ذَلِكَ أَمْرُ اللَّهِ أَنْزَلَهُ إِلَيْكُمْ وَمَنْ يَتَّقِ اللَّهَ يُكَفِّرْ عَنْهُ سَيِّئَاتِهِ وَيُعْظِمْ لَهُ أَجْرًا أَسْكُنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمْلًا فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَنْتُمْرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُمُ فَسْتَرْضِعْ لَهُ أُخْرَى لِيُنْفِقَ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيِّجَعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا (٦٥: ١-٧)

O Prophet! When you people divorce your wives, divorce

them according to their waiting periods, and count accurately this waiting period, and fear God your Lord. [During this waiting period] turn them not out of their houses, nor should they [themselves] leave, except in case they are guilty of some open lewdness. And [remember] these are the bounds set by Allah and those who transgresses the bounds of Allah, it is they who wrong their own souls. You know not that God might thereafter create new circumstances. [Divorce your wives in this very manner]. Thus when they approach the end of their waiting period, either take them back on equitable terms or part with them on equitable terms. And [whether you want to keep them or depart from them, in both cases] call to witness two honest men among you. And [O you witnesses] establish this testimony for God. It is this thing to which those are exhorted who believe in God and in the Last Day. And [if] those who fear God [encounter any difficulty], God will find a way out for them and will provide them from where they cannot even imagine. And those who put their trust in God, for them Allah is enough [to help them]. God is sure to bring about His designs. And God has set a measure for all things. And those of your women who have ceased menstruating and they also who have not menstruated [in spite of reaching its age], if you have any doubts about them, then their waiting period is three months. And the waiting period of pregnant women is till they deliver the child. God will ease the hardship of [those among you] who fear Him. Such is the directive of God He has revealed to you. He who fears God, God shall brush away his sins and shall richly reward him. [During the waiting period] lodge these women in your homes according to your means. And do not harass them to make life intolerable for them. And if they are pregnant, maintain them until they deliver the child. And if they suckle your [child], give them their remuneration and decide this matter according to the custom after mutual consultation. And if you find yourselves in difficulty, another woman will suckle [the child]. Let the man of means spend according to his means and the man whose resources are restricted, spend according to what God has given him. God does not

burden a person with more than He has given him. [Rest assured], after some difficulty, God will soon grant relief. (65:1-7)

If it becomes impossible for a husband and wife to get along with one another, there exists in divine religions the option of separation from one another. In religious parlance, this separation is called 'طلاق' (*ṭalāq*: divorce). As per the traditions of Abraham's creed, the Arabs were fully aware of it in the *Jāhiliyyah* period. No doubt certain deviations and innovations had found their way in their concept, however, a study of their history reveals that the law of divorce that existed in their society was almost the same as what Islam presented.¹ In the above quoted verses of *Sūrah Ṭalāq*, the Almighty has revived with certain additions and amendments that very law. Certain details of this law are also mentioned in *Sūrah Baqarah* and *Sūrah Ahzāb*, but a little deliberation shows that the basic verses in this regard are those of *Sūrah Ṭalāq* stated above.

Preceding Divorce

Before circumstances reach an extent that divorce remains the only option, it should be the intense desire of every person to keep in tact the marital relationship as far as possible. On these very grounds, in *Sūrah Nisā* the Almighty has permitted the husband to reprimand his wife if she is guilty of challenging his authority. However, if all efforts of reformation fail and it becomes evident that this relationship cannot remain intact, the Almighty has asked Muslims to make a last ditch effort: the relatives of the couple, their clan and tribe and other well wishers should come forward and use their influence to set right the situation. The procedure outlined by the *Qur'ān* in this regard is that one arbitrator should be appointed from the husband's family and another from the wife's family. Both of these arbitrators should try to reconcile the two in the hope that what the husband and wife could not accomplish themselves would be accomplished by the elders and well wishers of the two families. The *Qur'ān* says:

1. Dr Jawad Ali, *Al-Mufaṣṣal fi Tārīkhi'l-'Arab Qabla'l-Islām*, 2nd ed., vol. 5, (Beirut: *Dāru'l-'Ilm li'l-Malāliyyīn*, 1986), p. 548

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقُ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا حَبِيرًا (٤: ٣٥)

If you fear a breach between them two, appoint [two] arbitrators, one from his family, and the other from hers; if they wish for peace, Allah will create harmony between them: for Allah has full knowledge, and is acquainted with all things (4:35)

The last words of the verse subtly urge the couple to benefit from this scheme. If, instead of severing ties, they wish to create harmony among themselves they should keep in mind that the Almighty is benevolent. He will help them in redeeming the situation.

The Right to Divorce

The *sūrah* begins with the words: 'إِذَا طَلَّقْتُمُ النِّسَاءَ' (when you [people] divorce your wives). In this verse, in the subsequent ones also and in other verses of the *Qur'ān* where the directive of divorce is mentioned, the husband has been regarded as the initiator of divorce. Moreover, in 2:237, the words 'بِيَدِهِ عُقْدَةُ النِّكَاحِ' (in his hands is the knot of marriage) are used for the husband. These words bear clear evidence to the fact that the *Sharī'ah* has granted the husband the right to divorce. The reason for this is quite obvious. A husband has always been charged with the responsibility of protecting his wife and providing for her because God has given him the natural ability to fulfill these responsibilities. On these very grounds, the *Qur'ān* has regarded him to be the *Qawwām* (head of the family) and explicitly stated: 'وَالرِّجَالُ عَلَى النِّسَاءِ كَالَّذِي عَلَيْهِ الدَّرَجَاتُ' (and the husbands hold a degree of superiority over them). Consequently, both the nature of the responsibility and the regard for his position entail that he be given the right to divorce. It is an understood fact that the institution of family is an essential requirement of a human being. Just as entrusting two parties with different responsibilities but granting them equal rights to establish an organization or to dismantle it cannot keep that institution intact, the familial institution also has similar requirements. If a lady, in lieu of her own protection and subsistence and those of her children, has given herself in the custody of a man through a contract, then the right to annul this

contract cannot be given to the lady without the permission of the husband. This is in accordance with justice and fairness. If any other option is adopted, then this would be against justice, and would inevitably result in the dismemberment of the institution of family.

As a consequence of the above analysis, if a wife wants to separate from her husband, she cannot divorce him; on the contrary, she will demand divorce from him. In general circumstances, it is hoped that every gentleman, seeing that there is no other way out, would accept this demand. However, if this does not happen to be the case, a wife can turn to the court of law. When the state of affairs deteriorates to this extent, then there is a precedence set by the Prophet (sws) in this regard for the judicial forums: If it becomes certain that a wife has great aversion to her husband and does not want to live with him any more, then the court should order the husband to divorce her and if he wants he can have back all the wealth and property that he gifted to her except the *mahr* (dower).

Ibn 'Abbās narrates that the wife of *Thābit Ibn Qays* once came to the Prophet (sws) and said: 'O Messenger of Allah, I do not have any complaint regarding his character and person; however, I fear that I will lose my faith'². When the Prophet heard this complaint, he said: 'Would you return his orchard?'. She showed her consent. At this, the Prophet (sws) directed *Thābit* to accept the orchard and separate her by pronouncing one divorce sentence.³

The Procedure of Divorce

Whether a husband divorce his wife because of his own decision or does so at the demand of his wife, in both cases the procedure of divorce prescribed by the *Sharī'ah* is as follows:

1. Divorce should be given keeping in consideration the '*Iddat* (waiting period). This means that it is incorrect to divorce a wife

2. The meaning of this sentence as understood from other narratives in which this incident has been reported is that she did not like the looks of *Thābit* and that if in spite of that she persisted to live with him, she would not be able to follow the directives the Almighty has given a Muslim wife viz: being faithful to her husband and guarding her own chastity.

3. *Bukhārī*: No. 5273

in a manner that separates her instantaneously. In all instances, it must be given so that it becomes effective after a specific waiting period. 'Iddat (waiting period) in religious parlance means the period in which a divorced or widowed lady cannot marry any other person. Since this period has been primarily fixed in order to ascertain whether a lady is pregnant or not, therefore it is necessary that divorce be given after a lady has completed her menstrual cycle in that period of cleanliness in which the husband did not have any sexual intercourse with his wife. Every Muslim should be fearful of his Lord about emotions of anger which on such instances do arise against the wife. Consequently, when the Prophet (sws) was told that 'Abdullāh Ibn 'Umar had divorced his wife during her menstrual cycle, he was really annoyed and remarked:

مره فليراجعها ثم ليمسكها حتى تطهر ثم تحيض ثم تطهر ثم إن شاء
أمسك بعد وإن شاء طلق قبل أن يمس فتلك العدة التي أمر الله أن
تطلق لها النساء (بخارى رقم: ٥٢٥١)

Ask him to take her back and keep her in wedlock until she is through with her menstrual cycle and then once again passes through this cycle and then is through with it. After this, he can either detain her [in wedlock] or divorce her before having sexual intercourse with her. Because it is this beginning of the 'Iddat keeping regard of which the Almighty has directed [believers] to divorce their wives. (Bukhārī, No: 5251)

The Almighty has directed Muslims to carefully keep count of the period of 'Iddat. Since divorce is a matter of great consequences, and a lot of legal issues arise for the man, the woman, their children and their whole family, it is essential that the time and date of divorce be properly accounted for. Moreover, it is essential that at the time of divorce, the state of the woman, the date when the 'Iddat commenced and the date when it will end be kept track of. Whether the whole issue is ultimately settled within the family or has to be taken to court for settlement, in both cases it is this period of 'Iddat which dictates the time span within which a husband can revoke his decision and take back his wife (*rujū'*). Similarly, it is this period which

will determine the time for which the husband is liable to keep his wife in the house and provide for her. Likewise, the time when the inheritance is to be given to her and the time when the divorce process is complete and the lady is free to marry again shall be ascertained from the 'Iddat.

2. Until the 'Iddat period expires the husband has the right to take back his wife. The *Qur'ānic* words: 'فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ'، 'بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ' (thus when they approach their term appointed, either take them back on equitable terms or part with them on equitable terms (65:2)) refer to this fact. The Almighty has explained in *Sūrah Baqarah* that just as the right to give divorce rests with the husband, the right to take back the wife also rests with him so that he be granted a superior status in administering the institution of family which is necessary to maintain order in it.

This of course does not mean that only husbands have rights and wives have none. People must be aware that just as wives have certain duties regarding their husbands, they also have some rights. Man is not ignorant of these rights; he is well aware of them. Consequently, it is the obligation of the husbands that besides asking their wives to fulfill their obligations towards them, they must also keep in mind their rights:

وَيُعَوِّلُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ (٢: ٢٢٨)

And if their husbands wish to reform affairs, they [— the husbands—] have greater right to take them back [in this waiting period] should they desire reconciliation. And [this is because there is no doubt that] just as according to [society's] norms these women have obligations [towards their husbands], they also have rights, although men [as husbands] have a status above women. [This is the directive of Allah] and Allah is mighty and wise. (2:228)

Since there is a high probability that in such affairs one is bound to be governed by emotions and extreme reactions and as a result may commit one blunder after another, these two attributes – Mighty and Wise – mentioned at the end of the verse serve a special purpose. While referring to this purpose, *Imām*

The Almighty is 'Azīz (Mighty); hence, it is only His right to give this directive and He is also Ḥakīm (Wise); hence, whatever directive He gives is based on wisdom. Men should always submit to His directives without any hesitation whatsoever. If they oppose His directives, this would amount to challenging His honor and only hasten to invite His wrath. Similarly, if they are naive enough to think that they are more wise and sagacious than the Almighty, they will be responsible for ruining the law and system of the society with their very own hands.⁴

3. If the husband does not take back her wife within the 'Iddat period, then once this period expires the relationship of wedlock will cease to exist. Consequently, the husband is directed to make up his mind once this period is approaching its end. He should decide if he has to revoke his decision and take her back or is to persist with his decision and sever his relationship with her. In both cases, the Almighty has directed him to follow the *ma'rūf* (good conventions) of the society. The Almighty comforts them by saying that those who remain fearful of Him should rest assured that they will be worthy of His help if they encounter any difficulty.

It is pointed out in *Sūrah Baqarah* that if the husband decides to revoke his decision and take back his wife, then this should not be with the intention of hurting or harassing her. The verse of *Baqarah* quoted above refers to this aspect in the words 'إِنْ أَرَادُوا إِصْلَاحًا'. The revocation should not be to satisfy one's desire by tormenting the wife. In fact, the underlying reason for this revocation should be to lead a congenial marital life, other wise this would just be an act of oppression which shall greatly displease the Almighty in the Hereafter:

وَإِذَا طَلَقْتُمُ النِّسَاءَ فَبَلِّغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ
وَلَا تُمَسِّكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ وَلَا تَتَّخِذُوا

4. Iṣlāḥī, Amīn Aḥsan, *Tadabbur-i-Qur'ān*, 2nd ed., vol. 1, (Lahore: Faran Foundation, 1986), p. 533

آيَاتِ اللَّهِ هُزُورًا وَاذْكُرُوا نِعْمَةَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ
وَالْحِكْمَةِ يَعِظُكُمْ بِهِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ (٢: ٢٣١)

And when you have divorced your wives and they have reached the end of their waiting period, either retain them with kindness or let them go with kindness. But do not retain them with the intention of harm so that you commit excesses against them. And [you should know that] whoever does this wrongs his own soul. Do not make a mockery of Allah's commandments. Remember the favors He has bestowed upon you, and the Law and the wisdom which He has revealed, of which He instructs you. Fear Allah and know that He has knowledge of all things.

While explaining this verse, *Imām Amīn Aḥsan Iṣlāḥī* writes:

In the previous verses, the implied meanings were stated positively, but here they are stated negatively in order to caution cruel husbands who could misuse the right of divorce as well as the right to revoke it in the *'Iddat* period. Such an attitude, of course, is outright injustice and amounts to playing with the *Sharī'ah*. Those who are bold enough to do this may think that they are oppressing their wives; however, in fact, they wrong their own selves. This is because those who toy with divine directives and exceed the limits set by the Almighty shall have to face a grievous punishment.

In the end, a reminder is sounded regarding the blessings of the Almighty: He has made Muslims a chosen *Ummah* and sent a Prophet to them from among them to guide them. He has also blessed them with a book to guide them regarding good and evil. It is composed of the precepts of faith and law. If they repay this great favor by violating the limits of the Almighty and toying with His *Sharī'ah* then they should contemplate the consequences of such a behavior. The verse goes on to warn Muslims to remain fearful of the Almighty and to keep in mind that He has knowledge of all their deeds. In other words, He is granting respite to people in spite of their mischief. However, once He decides to catch them, no one will be

able to run away from His grasp.⁵

Similarly, if a husband decides to part ways with his wife he is directed to do so in a befitting manner. The words used in 2:220 are 'تَسْرِيحٌ بِإِحْسَانٍ'. In this regard, the following directives have been given:

Firstly, whatever amount of wealth, property, clothes, jewellery and other items have been gifted to the wife by the husband, they should not be confiscated by him. Here it should be clear that the verse is not referring to the *Nafqah* (maintenance) and *Mahr* (dowry), which are the absolute rights of a wife and confiscating them is unthinkable. What is emphasized is that a husband should not take back any gifts he may have given her.

There are two exceptions to the above mentioned directive:

First, if it is no longer possible to keep a marriage intact according to the limits set by Allah, and the family elders and society also supports the annulment, but a husband is unwilling to divorce his wife simply because he is concerned over losing wealth, property or other gifts he has given his wife, then the issue can be resolved in the following manner: the wife can give back part or all of the wealth gifted to her to relieve herself of her marital contract. In such cases, it would be lawful for the husband to accept these returned gifts.

Second, if the wife is guilty of open sexual misconduct. Since such a behavior destroys the very basis of the marital relationship, it is lawful for the husband to take back any gifts or wealth given to her.

The *Qur'an* says:

وَلَا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ
فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ
فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ (٢: ٢٢٩)

[If you decide to depart from them, then on this occasion] it is unlawful for you to take back from them anything you have given them unless both the husband and wife fear

5. *Işlāhī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2nd ed., vol. 1, (Lahore: Faran Foundation, 1986), p. 539

that they may not be able to keep within the bounds set by Allah. Then if you also feel that they will not be able to remain within the bounds set by Allah, there shall be no offence for either of them [regarding the gifts given by the husband] if the wife seeks divorce [by returning them to him] in ransom. These are the bounds set by Allah; do not transgress them. [And you should know that] those who transgress the bounds of Allah are wrongdoers (2:229)

وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُّبِينَةٍ...
وَإِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قَنْطَارًا فَلَا تَأْخُذُوا
مِنْهُ شَيْئًا أَتَأْخُذُونَهُ بُهْتَانًا وَإِثْمًا مُّبِينًا وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى
بَعْضُكُمْ إِلَى بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا (٤ : ١٩-٢١)

And do not treat them with harshness that you may take away what you have given them – except where they have been guilty of open lewdness... And if you decide to take one wife in place of another, even if you had given the latter a whole treasure of wealth take not the least bit of it back: Would you take it by slander and usurping [her] rights? And how could you take it when you have lain with each other and [at the time of marriage] they have taken from you a solemn covenant? (4:19-21)

For this second situation, a person has been warned not to dare take back by slander any wealth gifted to his wife. *Imām Anūn Aḥsan Iṣlāḥī* writes:

It is absolutely against the decency and integrity of a man to slander and accuse a lady with whom he had pledged to live forever under a firm marriage contract. It was she who had unveiled herself totally to him and both lived intimately and in great harmony with each other. How unseemly it is on the part of the husband that when relations had to be severed with her he should try to extract from her what he so willingly spent on her and should go as far as to malign and accuse her for this base purpose.⁶

6. *Iṣlāḥī, Anūn Aḥsan, Tadabbur-i-Qur'ān*, 2nd ed., vol. 2, (Lahore: 34 Renaissance January 2004

Secondly, the husband shall not be responsible to give the dower if the wife is divorced such that the husband has not touched her or her dower had not been fixed. However, if the dower had been fixed but a lady was divorced before having sexual relations with the husband, then the husband is liable to pay half the amount of the dower fixed except if the wife willingly forgoes the total amount or the husband pays the full amount. The *Qur'an* says:

لَا جُنَاحَ عَلَيْكُمْ إِنِ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً
وَإِنِ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنَصَفُوا
مَا فَرَضْتُمْ إِلَّا أَنْ يَعْفُونَ أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ وَأَنْ تَعْفُوا أَقْرَبُ
لِلتَّقْوَىٰ وَلَا تَنْسُوا الْفَضْلَ بَيْنَكُمْ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ (٢: ٢٣٦-٧)

There is no blame on you in the matter of dower if you divorce women before touching them or before fixing their dower and if you divorce them before touching them but after the fixation of a dower for them, then the half of this fixed dower should be given to them, unless they forgo it or he forgoes it in whose hands is the marriage knot; and if you [men] forgo your right, it is nearer to piety. And do not forget your superiority among yourselves. For Allah sees well all that you do. (2:236-7)

While commenting on this verse, *Imām An'ām Aḥsan Iṣlāḥī* writes:

Although the fact that the husband has divorced the wife before conjugal contact was made is one motive for her wife to forgo her right, the *Qur'an* here has urged the husband with regard to his honour and forbearance and his status as a husband to not desire from his wife to forfeit her share. Instead he should show magnanimity in paying her the full amount. The *Qur'an* has appealed to him on three grounds to make this sacrifice: Firstly, the Almighty has given him the right to untie the marital knot just as he had the right to tie it. Secondly, it is more befitting for the

stronger sex to show sacrifice and selflessness – the manifestations of true piety. Thirdly, the one degree of superiority a husband has been blessed with by being made the head of the family unit since he was naturally suited for this task requires that he take into account this aspect while dealing with the weaker sex. Its natural requirement is that he should be on the giving end rather than being on the receiving end.⁷

Thirdly, a wife at the time of parting should be given some resources of life. The *Qur'ān* says that this is an obligation of those who fear God and those who are righteous. If a lady is divorced even without going near her, a husband is exhorted to fulfill this obligation. The *Qur'ān* says:

وَالْمُطَلَّاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ (٢: ٢٤١)

And divorced women should in all cases be given some resources according to the norms of the society when they are sent off. This is an obligation on those who are fearful of God. (2:241)

In *Sūrah Ahzāb*, the words 'فَمَتَّعُوهُنَّ وَسَرَخُوهُنَّ سَرَاحًا جَمِيلًا' (But give them some resources [of life] and part with them in a befitting manner) are used to convey this meaning. In *Sūrah Baqarah*, this same directive has been given to husbands for wives whom they divorced without touching them or without fixing their dower. According to the *Qur'ān*, the amount of these resources should be ascertained keeping in view the norms of the society and the financial status of the husband:

وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا عَلَى الْمُحْسِنِينَ (٢: ٢٣٦)

And bestow on them some resources of life, the wealthy according to his means, and the poor according to his means. This is an obligation on those who are righteous. (2:236)

7. *Iṣlāhī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 1st ed., vol. 1, (Lahore: Faran Foundation, 1986), p. 548

It is evident from these words that this is an obligation on the husband. If a person does not fulfill it, he might not be liable to any legal action because this is something which pertains to a person's inner piety and virtue, but he would definitely be held liable in the Hereafter before his Lord, and in the Hereafter the weight and import of his virtuous deeds would suffer.

4. If a husband revokes his decision within the *'Iddat*, the lady will continue to remain his wife, but does this mean that a husband can divorce his wife repeatedly in this fashion whenever he wants and then revoke the decision within the *'Iddat*. The *Qur'an* has answered this question by saying that a person can only twice exercise this right of divorcing his wife in the *'Iddat* and then revoking the decision in his marriage with one lady. The *Qur'anic* words are: 'الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ' (This divorce may be pronounced twice, and then a woman must be retained with kindness or allowed to go with kindness). That is if a person divorces his wife and revokes his decision within the *'Iddat*, then he can exercise this right one more time in his life in his marriage. However, once he has used this authority twice, he can no longer use it again the third time. In such a situation, his wife would be permanently separated from him except if she marries some other person and he then also divorces her:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلَا
جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ وَتِلْكَ حُدُودُ اللَّهِ
يَسِينَهَا لِقَوْمٍ يَعْلَمُونَ (٢: ٢٣٠)

If a husband divorces his wife [for the third time], he cannot marry her until she has wedded another man. But if this [second husband] also divorces her, it shall be no offence for either of them to return to each other, if they think that they can [now] keep within the limits set by Allah. Such are the bounds of Allah. He makes them clear to men who want to gain knowledge. (2:230)

In case the same husband and wife want to remarry one another, the *Qur'an* has imposed three restrictions on them:

Firstly, the wife should formalize her *Nikāḥ* (marriage contract) with someone else.

Secondly, the second husband divorces her because for some reason the marriage cannot be pulled along.

Thirdly, the two think that after re-marriage the two would be able to remain within the bounds set by the Almighty.

In the first and second conditions, the word '*Nikāḥ*' only implies the legal marital knot and the word 'divorce' implies the divorce that one gives one's wife when it is no longer possible to keep the marriage intact. *Imām Amīn Aḥsan Iṣlāḥī* writes:

The real thing is that *Nikāḥ* is a known term referring to a marriage contract which takes place between a man and a woman with the intention of living together forever in the bond of matrimony. If this intention does not exist in a *Nikāḥ*, then in reality it is not a *Nikāḥ*; it is more of a plot conspired by a man and a woman. The option of divorce in marriage, upheld by the *Sharī'ah*, is not part of the original scheme; it is only a last resort to deal with insolvable situations. Consequently, the true nature of a *Nikāḥ* is that it should be solemnized with the intention of living together as husband and wife permanently. If a person honors a *Nikāḥ* only for a certain fixed period, then this is called '*Muta'h*', and it is totally prohibited in Islam. Similarly, if a person solemnizes a *Nikāḥ* with a lady and then divorces her just to provide her with a legal excuse to marry the first husband, then in religious parlance this is called '*Ḥalālah*' and, like '*Muta'h*,' it is also totally prohibited in Islam. A person who does such a despicable thing is like a pimp or pander or as a *Ḥadīth* says that such a person plays the role of 'a rental male species for breeding' and a person who does this and he who has it done are cursed by the Almighty'.⁸

The third condition has been imposed in order to make divorce a very serious affair so that people do not carelessly indulge in it. They should only divorce their wives while remaining fearful of the Almighty and when they think that there is no possibility of keeping the marriage intact. Similarly, when

8. *Iṣlāḥī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2nd ed., vol. 1, (Lahore: Faran Foundation, 1986), p. 537

they embark upon marrying someone, they should do so with sincerity of purpose and with the intention of creating a harmonious relationship. It is not befitting for a believer to adopt an attitude contrary to this.

Our jurists add to the above mentioned three conditions and say that a lady can only be divorced from this second husband once the two have had sexual intercourse. Without this, she is not legally allowed to become the wife of her first husband. They generally present the following three reasons in support of their view:

Firstly, the verb 'تَنْكِحُ' (she marries) has been used by the *Qur'an*. In this verb, the act of marriage has been attributed to the lady. However, since a lady does not contract marriage, rather a man does, so, 'تَنْكِحُ' here necessarily imply sexual intercourse.

Secondly, the word 'زَوْجًا غَيْرَهُ' (another husband) are used after 'تَنْكِحُ'. The word 'زَوْجًا' is clearly pointing to the fact that the marriage has already been taken place; hence, it is imperative that 'تَنْكِحُ' here necessarily imply sexual intercourse.

Thirdly, it has been reported that once the Prophet (sws) stopped a lady from marrying her first husband by saying that she is not legally allowed to marry him until she has had sexual intercourse with the first.

The answer to the first and the second of these arguments is clearly given by the *Qur'an*:

وَإِذَا طَلَقْتُمُ النِّسَاءَ فَبَلَّغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ (٢:٢٣٢)

And when you have divorced your wives and they have reached the end of their waiting period, do not prevent them from marrying their future husbands. (2:232)

It is evident from this verse that the act of marriage has been attributed to the lady and the word 'أَزْوَاجَهُنَّ' are used in the same sense as 'زَوْجًا غَيْرَهُ', but it is obvious that the words 'أَنْ يَنْكِحْنَ' refer to the marital knot and cannot in any way be construed for sexual intercourse.

Moreover, it is quite strange to contend that the act of marriage cannot be attributed to the lady. One might dare ask that if this is not possible, then can sexual intercourse be attributed to her. Viewed on similar grounds, it is a man who in fact does it and not a woman.

As far as the third argument is concerned, it has arisen because of not understanding a *Ḥadīth*. The way Imam *Bukhārī* has narrated it in his *Ṣaḥīḥ* clearly shows that the lady had gotten married only to become legally permissible for the first husband. Consequently, when she lied by saying that her husband was unable to establish marital contact with her, the Prophet (sws) scolded her and told her that she could now only go back to her first husband after tasting her second husband. This of course is not a condition that he imposed but it is the case of stating an impossibility: the implied meaning being that if according to her, her second husband does not have the ability to copulate with her then she can only be divorced from him after he copulates with her – which of course he will never since, according to her, he is not capable of it. Thus if anything can be adduced from this *Ḥadīth*, it is prohibition of *Ḥalālah*. It does not in anyway support the view of the jurists.

The text of the *Ḥadīth* is as follows:

عَنْ عِكْرِمَةَ أَنَّ رِفَاعَةَ طَلَّقَ امْرَأَتَهُ فَتَرَوَّجَهَا عَبْدُ الرَّحْمَنِ بْنُ الزَّبِيرِ الْقُرْظِيُّ
قَالَتْ عَائِشَةُ وَعَلَيْهَا حِمَارٌ أَحْضَرُ فَنَسَكَتَ إِلَيْهَا وَأَرْتَهَا خُضْرَةً بَجَلْدِهَا فَلَمَّا
جَاءَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَالنِّسَاءُ يَنْصُرُ بَعْضُهُنَّ بَعْضًا قَالَتْ
عَائِشَةُ مَا رَأَيْتُ مِثْلَ مَا يَلْقَى الْمُؤْمِنَاتُ لَجَلْدِهَا أَشَدَّ خُضْرَةً مِنْ تَوْبِهَا قَالَ
وَسَمِعَ أَنَّهَا قَدْ أَتَتْ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَجَاءَ وَمَعَهُ ابْنَانِ لَهُ مِنْ
غَيْرِهَا قَالَتْ وَاللَّهِ مَا لِي إِلَيْهِ مِنْ ذَنْبٍ إِلَّا أَنْ مَا مَعَهُ لَيْسَ بِأَعْنَى عَنِّي مِنْ هَذِهِ
وَأَخَذْتُ هُدْبَةً مِنْ تَوْبِهَا فَقَالَ كَذَبْتَ وَاللَّهِ يَا رَسُولَ اللَّهِ إِنِّي لَأَنْفُضُهَا نَفْضَ
الْأَدِيمِ وَلَكِنَّهَا نَاشِزٌ تُرِيدُ رِفَاعَةَ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَإِنْ
كَانَ ذَلِكَ لَمْ تَحْلِي لَهُ أَوْ لَمْ تَصْلُحِي لَهُ حَتَّى يَذُوقَ مِنْ عُسَيْلَتِكَ قَالَ
وَأَبْصَرَ مَعَهُ ابْنَيْنِ لَهُ فَقَالَ بَنُوكَ هَؤُلَاءِ قَالَ نَعَمْ قَالَ هَذَا الَّذِي تَزْعُمِينَ مَا
تَزْعُمِينَ فَوَاللَّهِ لَهُمْ أَشْبَهُهُ بِهِ مِنَ الْغُرَابِ بِالْغُرَابِ (بخاري رقم: ٥٣٧٧)

'*kramah* narrates that *Rafā'ah* divorced his wife. Thereafter she married '*Abdu'l-Rahmān Ibn Zubayr Qurẓī*. *Ā'ishah* says that she came to her wearing a green cloak and complained of her husband and showed her her

bruises – women do help one another – so when the Prophet (sws) came by, *Ā'ishah* said: 'I have only seen Muslim women being treated in such a way. Her skin is greener than her cloak'. *Ikramah* says that when her husband came to know that she had complained to the Prophet (sws), he also came over to the Prophet (sws) along with his two sons from his other wife. Upon seeing her husband, she got hold of the end of her cloak letting it hang from her hand and remarked: My only complaint is that whatever he has is no more than this [soft cloth]. At this, *Abdu'l-Rahmān* said: 'O Prophet (sws) of Allah she has told a lie! I am very strong and can satisfy her; the truth of the matter is that she is disobedient and wants to go back to *Rafā'ah*'. When the Prophet (sws) heard this, he said: 'If this is the case then you shall not be permissible for *Rafā'ah* unless *Abdu'l-Rahmān* tastes you'. Then, upon seeing the sons of *Abdu'l-Rahmān*, the Prophet (sws) remarked: 'Are these your sons?' When he replied in the affirmative, the Prophet said: 'Do you tell such lies [O *Abdu'l-Rahmān*'s wife]. By God, these [young boys] resemble *Abdu'l-Rahmān* more than a crow resembles another crow. (*Bukhārī*, No: 5377)

5. Whether the husband decides to divorce his wife or to take her back, in both cases the *Qur'ān* directs him to call in two Muslim witnesses on his decision. The witnesses are directed to remain steadfast on the evidence they give. The reason for this directive is to ensure that either of the parties is not able to refute a decision made and to resolve any other dispute that may arise in this regard. Moreover, this would make the matter very transparent for the people and settle doubts and confusions that may surface.

The above paragraphs explain the correct way of divorce. If a person divorces his wife according to this prescribed way or takes her back during the *'Iddat* period, then his decisions shall stand legally implemented. However, if divorce is given in violation of the prescribed way, then this is a legal case that would require a court ruling. Two similar cases of importance which came before the Prophet (sws) are as follows:

The first of these is the case of *'Abdullāh Ibn 'Umar* (rta). When he divorced his wife during her menstrual cycle, *'Umar*

(rta) presented his case before the Prophet (sws). The Prophet (sws) expressed his answer when he was informed of these details and said: ‘Ask him to take her back and retain her in wedlock until she enters her period of purity and then again passes through her menstrual cycle and is pure again. Then, if he wants, he can permanently retain her or divorce her without having intercourse with her because this is the beginning of ‘*Iddat*’ keeping regard of which the Almighty has directed a husband to divorce his wife.’⁹

The second case is that of *Rukānah Ibn ‘Abdi Yazīd*. By gathering all the narratives of this case, the whole situation that comes to light is that he had divorced his wife three times in one go. He then felt ashamed and presented his case before the Prophet (sws). The Prophet (sws) inquired: ‘How did you divorce her?’ He replied: ‘I divorced her three times in one go’. The Prophet (sws) again inquired: ‘What was your intention?’ He answered that he wanted to divorce her once only. The Prophet (sws) told him to reply on oath which he did and then said: ‘If this is the matter, then take her back. Only one divorce has been implemented’. *Rukānah* remarked: ‘O Prophet of Allah I had divorced her three times’. The Prophet said: ‘I know, take her back and this is not the proper way of divorcing a wife. The Almighty has said that if one must divorce his wife, he should do so keeping in consideration the ‘*Iddat*’.’¹⁰

The foundations on which the decisions of the Prophet (sws) are based in both the above quoted cases are:

- i. If divorce is not given according to the prescribed procedure but there is a possibility to make amends for the violation, then the sanctity of the law demands that amends be made.
- ii. A person has the right to explain his statements. If he says that a particular statement was uttered by him without any intention or with full intention, his explanation can be accepted. The following words of the Prophet (sws) also relate to this very foundation: ‘Divorce given in a state of rage is not to be legally enforced and neither is the decision to liberate a slave in such a situation’ (*Abū Dā’ūd*, No: 2193).

9. *Bukhārī*, No: 5251; *Abū Dā’ūd*, No: 2182

10. *Abū Dā’ūd*, No: 2196, 2206; *Ibn Mājah*, No: 2051; *Tirmadhī*, No: 1177, *Musnad Aḥmad*, No: 2383

iii. If a person says that he has divorced his wife three times, then this can mean that he has in fact divorced her three times and this can also be a statement that portrays the severity and intensity of his decision. Since both these possibilities exist when these words are said, hence any explanation of the speaker regarding the meaning in which he used them should also be acceptable. However, this does not mean that if there exist evidence contrary to the explanation made that such an explanation be accepted. A court has full authority to reject such an explanation if it is not satisfied. Consequently, when ‘Umar (rta) observed that people were no longer careful in uttering the divorce sentence he declared that he would not even accept a statement of explanation from the husband and three divorces pronounced would be counted as three.¹¹

The Directive of ‘Iddat

Sūrah Talāq says that divorce should be given keeping in view the ‘Iddat (waiting period). At another place, the *Qur’ān* has explained that period of ‘Iddat is three menstrual cycles:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ (٢: ٢٢٨)

And divorced women must keep themselves waiting for three menstrual cycles. (2:228)

In this verse, the Arabic word ‘قُرُوءٍ’ is the plural of ‘قَرَّةٌ’. In Arabic, this word means both the ‘menstrual period’ and the ‘non-menstrual period’. While presenting his research on this word, *Imām Amīn Aḥsan Iṣlāḥī* writes:

After much deliberation on the root of the word and its derived forms, I have come to the conclusion that its real meaning is that of ‘menstruation’. However, since every menstrual period is followed by a period of purity (طُهْرٌ), the word is also used in this meaning. This is similar to the usage of words ‘day’ for ‘night’ and vice versa. Every language has such words.¹²

11. *Muslim*, No: 2689

12. *Iṣlāḥī, Amīn Aḥsan, Tadabbur-i-Qur’ān*, 2nd ed., vol. 1, (Lahore: Faran Foundation, 1986), p. 532

The word 'فرء' in the opinion of this writer as well means 'menstruation' because in these verses the real issue is to ascertain whether a lady is pregnant or not. It is the 'period of menstruation' which actually ascertains this and not the 'period of purity'. Moreover, women are asked to wait in this period and this waiting period can only be ascertained through the menstrual cycle because its beginning can be known with certainty.

In normal circumstances, the 'Iddat period is three menstrual cycles; however, if a woman does not menstruate because of advancing age or in spite of reaching puberty¹³, then the *Qur'ān* has specified in *Sūrah Talāq* that the 'Iddat period would be three months. It has also been stated that the 'Iddat period of a pregnant lady extends to childbirth. In *Sūrah Talāq*, for women who do not menstruate because of old age, there also exists the condition of 'إِنْ ارْتَبْتُمْ' (if you are doubtful). While explaining this condition, *Imām Anūn Aḥsan Iṣlāhī* writes:

It seems to me that the condition of 'إِنْ ارْتَبْتُمْ' (if you are doubtful) is to differentiate between a lady who does not menstruate because of age but has had sexual intercourse with her husband and a lady in similar state but who did not have sexual intercourse with her husband. For if a lady who does not menstruate because of age has had sexual intercourse with the husband there might be a chance of pregnancy if her state was temporary for some reason. A same situation may arise for a lady who has not menstruated in spite of reaching the age and she has sexual intercourse with her husband ... It is possible that the question may arise in the mind of a person that if this was the case, then why did the *Qur'ān* not explicitly state that the 'Iddat of a lady who does not menstruate because of age and who has had sexual intercourse is three months. The answer to this question is that such a statement of the *Qur'ān* would not have pointed to the underlying reason of 'Iddat – which was essential to be highlighted. This

13. The *Qur'ānic* words are 'وَاللَّائِي لَمْ يَحْضُنْ'. In the Arabic language the word 'لَمْ' is used to for total and strong negation. Hence the expression cannot connote those girls who have not started to menstruate; it can only connote girls who have not menstruated in spite of reaching the age.

underlying reason is not merely the fact that whether a lady has had sexual intercourse or not: it is the doubt that she may be pregnant.¹⁴

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُونَهَا (٤٩:٣٣)

O you who believe! when you marry believing women, and then divorce them before you have touched them, no period of 'Iddat have they for you which you can ask them to complete. (33:49)

The directives of 'Iddat which are mentioned in the relevant verses of *Sūrah Talāq* are:

Firstly, during 'Iddat neither should a wife leave her house nor is the husband authorized to turn her out from her house. Living together might hopefully be beneficial for both and they might reconcile and thus save a family from breaking. The *Qur'ānic* words 'لَعَلَّ اللَّهَ يُحْدِثَ بَعْدَ ذَلِكَ أَمْرًا' (You know not that God might thereafter create new circumstances) point to this very aspect. Further, a warning is sounded that the directives mentioned are the bounds set by Allah and any one who tries to exceed them would not harm Allah in any way; on the contrary, he would only harm his own well-being. It is not that the Almighty has set these bounds for His own benefit. It is for the welfare of His creation that He has set them forth; so any one who violates them only wrongs his own soul.

The only exception to the above directive is if the basis on which a divorce has been given is open lewdness which the *Qur'ān* has termed as 'فاحشة مبيّنة'. In the Arabic language, this expression implies fornication and other lesser forms of sexual contact. Obviously, in such a situation neither is it proper to demand from the husband to keep the wife in the house nor can the benefit be attained for which this directive had been given.

Secondly, it is stated that a husband should provide residence and maintenance to his divorced wife according to his status. After divorce, a husband can be very stingy in this regard.

14. *Işlāhī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2nd ed., vol. 8, (Lahore: Faran Foundation, 1986), p. 442

Consequently, he has been directed not to provide her in a manner that damages her self-esteem. He should provide according to his resources and the social status he is maintaining. It is further stated that in this period a husband should in no way try to make life difficult for his wife so that she is forced to leave her house herself.

It is obvious that after the pronouncement of the third divorce also, a husband shall be responsible to provide residence and maintenance to the divorced wife. The reason is that a lady accepts to remain in *'Iddat* only to ascertain whether she is the mother of his child or not. It is to protect his lineage that she undertakes this wait. The words 'فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ' (no period of *'Iddat* have they for you which you can ask them to complete) of the above quoted verse of *Sūrah Ahzāb* clearly point to the fact that if there pregnancy is a possibility then observing the *'Iddat* is an obligation imposed on the wife from the husband. Indeed, after the third divorce, a husband does not have any right to revoke his decision and take back his wife; however, as a result of this, the only thing that can be revoked is their living together. In no way can the responsibility to provide her with residence and maintenance be revoked. Consequently, this is absolutely certain that whether *'Iddat* is three menstrual cycles, three months or extend to the birth of the child, a husband is liable to provide her wife with residence as well as maintenance.

Here some people may object to the above view of this scribe by presenting the case of *Fāṭimah bint Qays*. It is narrated that her husband *Abū 'Amr* had already divorced her twice. Then when he was sent to Yemen with *'Alī* (rta), he sent her the third divorce pronouncement as well. During her *'Iddat*, when she demanded residence and maintenance, the relatives of the husband refused this demand. At this, she came to the Prophet (sww), who decided that she has neither the right to be given residence nor any maintenance.¹⁵

The above referred to narrative is quoted in some books of *Ḥadīth*, but it is evident from certain other narratives that when her case was presented before the Caliph *'Umar* (rta), he too refused her demand by saying that he could not accept the verdict of a lady which is against the Book of God and the

15. *Muslim*, No: 2715; *Abū Dā'ūd*, No: 2290

Sunnah of his Prophet (sws).¹⁶ When in the time of *Marwān Ibn Ḥakam*, this case came into discussion for a third time, *Ā'ishah* (rta) severely criticized this narrative. *Qāsim Ibn Muḥammad* inquired from *Ā'ishah* (rta): 'Are you not aware of the case of *Fāṭimah bint Qays*'. She replied: 'It is better if you do not mention her matter.'¹⁷ In another narrative, *Ā'ishah*'s words are: 'What has happened to *Fāṭimah*; does she not fear God.'¹⁸ A third narrative is from '*Urwah Ibn Zubayr*. He says that *Ā'ishah* said: Nothing will benefit *Fāṭimah* if she narrates this *Ḥadīth*.¹⁹ In still another narrative, '*Urwah* says that *Ā'ishah* expressed her anger for *Fāṭimah* and said: 'She was in an empty house where none whom she knew lived and hence the Prophet (sws), for her own protection, had directed her to change her residence.'²⁰

This is the real background of this narrative; hence, no one should consider it of worthy of any importance.

Besides the above mentioned directives, the Almighty has given a further directive in *Sūrah Baqarah* that no lady should try to conceal her pregnancy during her '*Iddat*. It has been indicated a number of times earlier in this article that the very directive to observe the '*Iddat* has been given for ascertaining whether a lady is pregnant or not. Consequently, it is an essential outcome of this directive and the Almighty has forcefully directed us to observe it:

وَالْمُطَلَّاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنْنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ (٢: ٢٢٨)

And divorced women must keep themselves waiting for three menstrual courses. And it is unlawful for them, if they believe in Allah and the Last Day to hide what He has created in their wombs. (2:228)

16. *Muslim*, No: 2719

17. *Bukhārī*, Nos: 5321-2

18. *Bukhārī*, Nos: 5323-4

19. *Bukhārī*, Nos: 5325

20. *Bukhārī*, Nos: 5326

After Divorce

Once a divorce is actualized, one issue that can become a source of dispute is suckling of young children. In the under discussion verses of *Sūrah Ṭalāq*, the Almighty has said that if their mother is willing to suckle them, then the husband shall pay her for this service and this remuneration shall be ascertained through mutual consultation and in a befitting manner. If such an agreement is not reached between the parents, then according to the *Qur'ān* any woman can be asked to feed the children. It is also told that a rich person should spend according to his means and resources and a poor one according to his. Neither is it permitted for the rich person to deal with others in a manner that is below his status and neither should a poor person be burdened beyond his means. The Almighty holds a person responsible to obey His directives according to his capacity and status.

In *Sūrah Baqarah*, this directive has been mentioned in detail:

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ
وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا
لَا تُضَارَّ وَالِدَةٌ بَوْلِدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ
أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ
تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُم بِالْمَعْرُوفِ وَاتَّقُوا
اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ (٢٢٣)

And [after divorce also] mothers shall suckle their offspring for two whole years, for those who desire to complete the term. And the child's father [in such a case] shall have to bear the cost of their food and clothing according to the norms. No one should be burdened beyond his capacity. Neither shall the mother be treated unfairly because of her child, nor the father on account of his child – and an heir shall be accountable in the same way – But if they both decide on weaning by mutual consent and after due consultation, there is no blame on them. And if you decide to engage someone else to suckle upon your offspring, there is no blame on you, provided you pay [the mother] in accordance with the norms [of the

society] what you promised. But fear Allah and know that Allah sees well what you do.

Imām Anūn Aḥsan Iṣlāḥī, while summarizing the directives of suckling that these verses mention, writes:

i) It is the responsibility of a divorced lady to suckle her offspring for two full years in case the husband wants her to complete the total suckling period.

ii) During this period, it is the responsibility of the father to provide his divorced wife with food and clothing, keeping in view the norms of the society. In other words, the status of the husband, the needs of the divorced wife and her own status shall be kept in consideration while providing her this maintenance.

iii) Neither of the parties shall be burdened beyond their capacity. Neither the mother shall be harmed in any way by taking advantage of the fact that she is the mother of the child nor the father be unduly pressurized in any way on the pretext that he is the father of the child.

iv) If the father of the child is dead, his heirs will be responsible for all the above mentioned rights and obligations.

v) If through mutual consent and consultation, the estranged husband and wife decide to terminate the suckling period before two years, they can do so.

vi) If the child's father or, in his absence, the heirs of the child want to suckle the child from through some other lady instead of the mother, they are authorized to do so provided what has been agreed with the mother regarding her maintenance is fully honored.²¹

The second thing which can become a source of dispute is the

21. *Iṣlāḥī, Amīn Aḥsan, Tadabbur-i-Qur'ān*, 2nd ed., vol. 1, (Lahore: Faran Foundation, 1986), p. 545

husband's attitude of hindering further marriage of his former wife. This attitude whether in the form of open forbiddance on his part or in the form of covert and stealthy schemes has been strictly prohibited by the Almighty in *Sūrah Baqarah*. He has counseled people that once a lady has been divorced, her former husband has no right to cause hindrance in any decision she makes. She has the liberty to marry wherever and whenever she wants. If her decision to marry is in accordance with the norms of the society, it cannot be objected to in any way. The *Qur'ān* uses the word 'المَعْرُوف' to convey this meaning. This word implies that though a man and a woman are totally free to take their decision, they must remember not to do anything that is against the norms of decency and which may damage the honour and repute of the former or future husband or of the family of the woman herself. The *Qur'ān* says:

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ بِالْمَعْرُوفِ ذَلِكَ يُوعَظُ بِهِ مَنْ كَانَ مِنْكُمْ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ
الْآخِرِ ذَلِكَمْ أَزْكَى لَكُمْ وَأَطْهَرُ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ (٢: ٢٣٢)

And when you have divorced your wives and they have reached the end of their waiting period, do not prevent them from marrying their future husbands if they have come to an agreement according to the norms [of decency]. These words of advice are given to every one of you who believes in Allah and the Last Day; this is more decent for you and more chaste. And [in reality] Allah knows, but you do not. (2:232)

While explaining the last part of the verse *Imām Anūn Aḥsan Iṣṭalāḥī* writes:

These sound words of advice are being given to those who believe in Allah and the Last Day. In other words, those who have belief in Allah and the Last Day should follow what is being advised since this is the outcome of true belief. Such an attitude is more pure and seemly. If a lady is impeded in anyway to re-marry, this may result in great evils in the family and society. It is from here that back doors to clandestine relations and fornication are opened,

eventually bringing great disrepute to those whose false pride induces them to obstruct natural emotions through worthless customs. The words ‘And Allah knows, but you do not’, at the end imply that man’s knowledge and vision is very limited. He cannot fully grasp the ups and downs of life; therefore, he should follow what the Almighty is directing him to do.²²

Besides the above mentioned two issues, a third matter that can cause dissension between the divorced couple is the custody of children. The *Sharī‘ah* has not given any directive in this regard because this matter can only be decided keeping in view the welfare of the children and the circumstances of the parents, which of course vary a lot. However, those in authority can obtain a lot of guidance in this regard from the various cases decided by the Prophet (sws). Following is an account of some of them.

‘*Abdullah Ibn ‘Umar* (rta) narrates that a lady came to the Prophet (sws) and said: ‘For this son of mine, it is only my belly which was his abode, and my breasts which were his vessel and my lap which was his dwelling place. Now his father has divorced me and wants to take him away from me. The Prophet replied: ‘You are more entitled to keep him until you marry again’.²³

Abū Hurayrah (rta) narrates that in his presence once a lady came to the Prophet. I heard her saying: ‘My husband wants to take away from me this child even though he has brought over water for me from the well of *Abū ‘Anbah* and given me a lot of benefit’. The Prophet replied: ‘Both of you can cast a lot on this’. [Upon hearing this], the husband said: ‘Who will quarrel with me regarding this son of mine’. The Prophet asserted: ‘O son! This is your father and this is your mother; grasp the hand of the one you want to hold’. The child grasped the mother’s hand and she took him away.²⁴

(Translated from ‘*Mizān*’ by Shehzad Saleem)

22. *Işlālī, Amīn Aḥsan, Tadabbur-i-Qur’ān*, 2nd ed., vol. 1, (Lahore: Faran Foundation, 1986), p. 544

23. *Abū Dā’ūd*, No: 2276

24. *Abū Dā’ūd*, No: 2277

Book Review

Divorce and Remarriage among Muslims in India

Yogindar Sikand

Editor: Imtiaz Ahmad
Publisher: Manohar, New Delhi
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The debate on the Muslim Personal Law has occasioned a flurry of writings by both its critics as well as its supporters. For both, the Muslim Personal Law is seen as intimately related to notions of Muslim community identity. Right-wing Hindutva groups see separate personal laws for Muslims as a legal stumbling block to their own agenda of imposing a monolithic Hindu identity on all the citizens of India. Conversely, many Muslims see Muslim Personal Law as a legal guarantee of their separate community status. Despite the large number of books as well as media space devoted to the issue, the debate continues to rage, with rival groups seeming no closer to mutual comprehension and dialogue.

One of the central issues in discussions of Muslim Personal Law is the status of women. Typically, Muslim writers argue that Islam has provided women with a fair deal, granting them rights, such as inheritance or the freedom of marital choice, that no other religion had ever accorded them. On the other hand, critics argue to the contrary, claiming that the Muslim Personal Law grossly violates the principle of gender equality. In particular, it is argued that the considerable freedom that the Muslim Personal Law, as it exists in India today, grants to husbands to divorce

their wives is an affront to modern sensibilities and hence must be changed. This professed concern for the rights of Muslim women is often used by fiercely anti-Muslim Hindutva ideologues in order to justify their opposition to Muslim Personal Law.

This book makes a significant advance on current discussions related to Muslim Personal Law. It brings together a series of seventeen case studies from different parts of India, based on empirical research, focusing on issues related to divorce and remarriage. As Imtiaz Ahmad argues in his introductory chapter, discussions related to Muslim Personal Law have, so far, remained largely confined to arguments over the law. By shifting the debate to concrete social reality the book challenges several received notions about Muslim law and the actual status of Muslim women, in particular on the issue of divorce.

In discussing the legal versus social status of Muslim women, in particular on matters related to divorce, Ahmad argues for a reconsideration of precisely what constitutes Muslim law. Here he pleads against the sort of essentialism common to both detractors and supporters of Muslim Personal Law as it exists in India today. Instead, he stresses the need to explore the possibilities within the Islamic tradition to generate new insights on women's rights, including on divorce. This entails a new *ijtihad* that, while guaranteeing women's rights, would remain true to the values of equality and justice so central to the *Qur'an*.

The remainder of the book consists of a series of empirical studies of divorce among Muslim communities in various parts of India, including Assam, Uttar Pradesh, Tamil Nadu, West Bengal, Andhra Pradesh, Bihar and Kashmir. They point to the immense diversities that exist among Muslims across India, warning against the tendency to essentialize Muslims in terms of stereotypes. Contrary to received understandings, the contributors point out that arbitrary divorce is not rampant among Muslims, and is certainly not more common than among other communities. In fact, divorce is often frowned upon as contrary to respectable behaviour. Further, divorce does not always or even most often take the form of *ṭalāq al-bid'ah* or triple divorce in one sitting initiated by the husband, as is often assumed.

This does not, however, mean that divorce is not often used by

husbands in an arbitrary way or to deny the often serious implications it has for women. Several contributors point out that the threat of divorce is often used to tyrannize women; that more often than not marriages are conducted without the signing of a marriage contract that could guarantee the wife's marital rights; that the mehr or dower that the wife is meant to receive is rarely paid; that although in theory divorced Muslim women are allowed to remarry local Muslim communities often look upon with this with considerable distaste; that often divorced women do not receive any financial support from their husbands, relatives or the wider community although Islam does insist on this, and so on.

In grounding the debate on divorce in actual empirical reality, this book helps to shift the focus of discussion on the subject, underlining the fact that whatever the theoretical position of women's status in Muslim Personal Law might be, their actual conditions are markedly different. Some of the papers make important comparative analyses, showing that although Hindu and Muslim women are subjected to different personal law regimes, their actual status is remarkably the same in large parts of India. This suggests that what is more important for Muslim women's status is not simply a legal change but, rather, efforts to improve their social, educational and economic conditions. In the absence of this, the continuing debate on Muslim Personal Law versus a Uniform Civil Code would have little bearing on the actual position of Muslim women.

(Answered under the supervision of the Editor)

Meaning of the Term *Shahīd*

Question: What does the term *shahīd* in Islamic literature truly represent? Are all those die in the holy wars and the innocent people killed in some accidents or are murdered *Shahīd*? I am really confused. Please enlighten me on this issue and also explain what happens to a *shahīd* after his or her death.

Answer: The word *Shahīd* connotes ones who bears witness to a certain fact. It implies martyrs as they live their lives bearing witness of the truth and spare nothing to remain steadfast in the way of their Lord even their lives. The basic thing that qualifies one to the position is this conviction. This conviction varies in different individuals raising them to different stages. Therefore, we cannot draw a line to distinguish between their degrees.

Those who die in accidents or killed innocent may get some reward from the Almighty but accidentally being killed in a war by the enemy does not raise one to the status of *Shahīd*. The basic criteria are living the life of submission to God and sacrificing all in His way even life if need be.

The Holy *Qur'ān* has informed us that those who lived life of submission before God and sacrifice their lives necessarily merit success in the Hereafter and are rewarded right from their death. It says:

Think not of those, who are slain in the way of Allah, as

dead. Nay, they are living. With their Lord they have provision. (3:169)

This brief information tells that they are not dead like others rather they are being rewarded. This treatment is special for the martyrs, the Messengers, the Prophets (sws), and other pious people who lived lives of virtue and rightness. They will be rewarded right after death. The Holy *Qur'ān* does not tell us the nature of this life. This falls within the matters we cannot fully comprehend like most of the matters regarding the hereafter. We only know that they will be experiencing life and will be rewarded by their Lord and while the nature of this reward cannot be comprehended.

Taking a Small Amount of Alcohol

Question: Does the Holy *Qur'ān* specifically declare 'alcohol' or wine prohibited (*harām*)? Some people argue that it does not. Therefore, these people contend that a Muslim can consume alcohol as long as it does not cause a loss of sanity and he does not fall into the state of mindlessness. Please provide *Qur'ānic* reference in support of your reply.

Answer: It would be safe to say that there was no need for the Holy *Qur'ān* to expressly declare alcohol *harām*. All intoxicants are already known to be harmful through our innate guidance. The Islamic *Sharī'ah* takes these dictates of nature for granted. While pointing towards this abhorrence for liquor the *Qur'ān* asks its followers to abstain from consuming it:

O you who believe: this liquor and gambling and idols and these divining arrows are abominations devised by Satan. Avoid them that you may succeed. Satan seeks to stir up enmity and hatred among you by means of liquor and gambling and to keep you from the remembrance of Allah and from the prayer. Will you not then abstain from them? (5:90-1)

Hence, it does not mean that we can take as much quantity of wine that does not cause inebriation. Many things are forbidden

because they can eventually lead one to the undesired state, which we are required to refrain from. Take for example the matter of fornication. The Holy *Qur'ān* while giving the directive of the prohibition of fornication enjoined upon the Muslims not to draw near fornication. That means that no one should indulge in activities that are likely to lead him or her into committing fornication. Similarly, one cannot draw a line between the quantity which casts intoxication and which does not. Therefore, one cannot be allowed to take even a small amount of it. An Islamic state can forbid it on the ground of restriction on the means, which are likely to lead one to the state of inebriation.

Celebrating Birthdays

Question: I have been told that celebrating birthdays is tantamount to innovation in the religion of God. The following saying of the Holy Prophet (sws) is quoted to prove this claim.

Whoever introduces anything into this matter of ours that does not belong to it shall have that action rejected.
(*Bukhārī*, Muslim).

In another version recorded by *Muslim* and by *Bukhārī*, the wording is as follows:

Whoever performs a deed which is not in accord with our affairs, then that deed is rejected.

These people maintain that the Holy Prophet (sws) did not celebrate his birthday at all during his lifetime nor did he ever order it to be celebrated. He also did not teach this to his Companions (rta). Therefore, the rightly-guided caliphs and all of his Companions (rta) did not celebrate it. They were the most knowledgeable of the people concerning his *Sunnah* and they were the most beloved to the Holy Prophet (sws). Therefore, if one is supposed to celebrate the Holy Prophet (sws)'s birthday, this would have been made evident at their time. Similarly, not one of the scholars of the best generations celebrated his birthday nor did they order it to be done. The absence of the celebration

with the Companions (rta) and the most learned scholars of the past would mean that such a celebration is not from the Law that Allah sent Muhammad (sws) with.

Answer: I humbly differ with the referred to opinion on the ground that the *Āḥādīth* quoted to prove the notion do not lead to the conclusion. Let us consider the *Āḥādīth* presented in favour of the opinion.

The words ‘into this matters of ours’ used in the first *ḥādīth* are worth pondering. These words clearly indicate that the Holy Prophet (sws) is talking about something specific. The same is the case with the second tradition. Here again you find the words ‘in accordance with our affairs’ which clearly indicate to it being specific. We will try to determine what that specific thing is.

We know that the only thing that the Holy Prophet (sws) brought is the religion of Islam. We also know that all religious matters should spring from the fountainhead of the Holy *Qur’ān* and the *Sunnah*. He should not have forbidden us from other realms of affairs. If so the religion would be an impediment in progress. We would not even be able to use all are kitchen utensils we use today. Therefore, the *Ḥādīth* should be interpreted in context of religious teachings and practices. The Holy Prophet (sws) only forbade innovation in religion not in all human activities and disciplines.

Now the question arises whether celebrating birthdays is an act religious in nature. The answer to the question lies with those who celebrate it. They simply express their joy or express their gratitude towards the Almighty. The act in its nature is not a religious act rather it is a social custom.

A legitimate objection would be that celebrating the birthday of the Holy Prophet (sws) very likely is an act that can be easily (not necessarily) be associated with religion. We regret to say that often it is deemed a religiously rewarding act. However, celebrating our own birthday could not and should not be given a religious tint. This is a social act not religious. Therefore, there may be other faults in the custom but it can no way be deemed an innovation in religion. Its prohibition must be mentioned explicitly in the *Sharī‘ah*. We cannot hold something prohibited for ourselves. We cannot extend the effect of a ruling issued by the *Qur’ān* or the *Sunnah* to what it has no relevance with.

Marrying a Hindu Girl

Question: I wanted to know do Islamic teachings allow a Muslim to marry a Hindu girl? If so then what is the reason of this permission and if does not then why?

Answer: Faith and religion is a very important matter for all the individuals. Therefore, commonly people marry into their respective faiths. However, the Islamic *Sharī'ah* has allowed Muslims to marry women of the People of the Book. This it should be noted is also a conditional allowance. The Holy *Qur'ān* only allowed the Muslims to marry into adherents of these faiths when the supremacy of Islam was established in the Arabian Peninsula. The People of the Book were living the life of subjugation. The Holy *Qur'ān* made subtle allusion to the fact. The related verse of the Holy *Qur'ān* reads:

This day are [all] good things made lawful for you. The food of those who have received the Scripture is lawful for you, and your food is lawful for them. And so are the virtuous women of the believers and the virtuous women of those who received the Scripture before you (lawful for you) when ye give them their marriage portions and live with them in honor, not in fornication, nor taking them as secret concubines. Whoso denies the faith, his work is vain and he will be among the losers in the Hereafter. (5:5)

The *Qur'ānic* words 'now you can marry' clearly allude to the fact that the circumstances and position of Muslims is considered in this regard. We cannot marry in any circumstances among the followers of other religious barring the People of the Book.

Wearing Bangles

Question: I was wondering whether non-golden bangles and necklaces are forbidden for males.

Answer: I would like you to appreciate that the Islamic *Sharī'ah* has not forbidden Muslims from wearing gold in the

first place. The *Āḥadīth* ascribed to the Holy Prophet (sww) prohibiting men from use of gold are actually an application of another *Qur'ānic* directive. The Holy *Qur'ān* has clearly declared extravagance as condemnable because it is this habit, which eventually leads him to pomp and show. The Holy Prophet (sww) applied this directive to wearing of the gold which was and still is a status symbol and a mean of showing off ones wealth. However, since women have a natural desire for beautifying them and adorning themselves with ornaments, the Holy Prophet (sww) granted them a common sense exception. Keeping the basis of the directive in mind one can safely conclude that not only gold but every other item which becomes a status symbol and is used as a mean for showing off wealth should be dealt with accordingly. As a necessary corollary, one cannot be stopped from using things which are generally not considered status symbols. We believe that bangles and necklaces are not worn for the purpose; therefore there is no point to declare wearing these as prohibited.

Hiding One's Sins

Question: I wanted to know how far is an adulterer or fornicator rightfully allowed to draw a veil across his misdeeds? If someone questions him whether he has committed adultery or fornication, for instance, is it permissible for him to lie to hide his sin? If he says that he chooses not to answer that question it is very likely that questioner will automatically understand that there is something wrong.

Answer: It is desirable not to reveal such sins to others. The Holy Prophet (sww) would not willingly hear such voluntary confessions. If someone questions such a person he should try not to reveal the matter. However, if the matter has been brought before the court and he is questioned there, then he is not allowed to hide the truth.

The Prophet (sww) is reported to have said:

He among you who gets involved in such filth, should hide behind the veil stretched out for him by Allah, but if he unfolds the veil, we shall implement the law of Allah upon him. (*Mu'atta*: No. 1562)

Similarly, he once told a person:

If you had hidden the crime of this [person], it would have been better for you. (*Mu'atta*: No. 1553)

Offensive Language for the Prophet (sws)

Question: Recently my teacher was lecturing on the life story of the Holy Prophet Mohammed (sws). I was very disturbed when she referred to his moving to *Madīnah* from *Makkah* in words like he 'sneaked away' or 'fled'. She is not a Muslim and neither are many of the students who are taking this course at my University. Through another source I was given the impression that the Holy Prophet (sws) had migrated to *Madīnah*. I was wondering if you could guide me through this. I would be very grateful.

Answer: It is a well known historical fact that the Holy Prophet (sws) faced severe difficulties in *Makkah* and when he was commanded to leave the city because the *Makkans* were out to kill him. But it is evident that he did not leave *Makkah* for fear of his life rather he migrated to *Madīnah* on divine bidding like many other messengers of Allah did (for example the Holy Prophet (sws) Moses, Noah and Abraham). In all cases, the migration undoubtedly was done as required by the Almighty in the course of the preaching mission of the respective Holy Prophet (sws) to save them from the vicious intentions of the disbelievers and punish the rejecters after them. This obviously does not translate into the cowardice of the Messengers of Allah. We well know the Holy Prophet (sws) faced severe persecution at the hands of the people of *Makkah* and faced it with steadfastness.

A person is expected to mention this reality as it is but if someone speaks of it in offensive tone we can only argue with him to consider the reality and also to respect at least the personalities which are revered by a large number of people in the world. We cannot criticize and condemn such people severely. We can only discuss the point with them politely. The best course for you would be ignore the remarks as it would do not good to fret over this for long. However, the concern you show over the matter

reflects your love and belief in the Messenger of Allah.

Marriage without being Divorced

Question: I have a very important question. Three years ago my father had forced me into marriage with man whom I do not like. I was fortressed in home for over a month and nobody would see me until the day they brought the man and forced the marriage upon me. Everything was against my will God truly knows that. After marriage we did not establish marital relationship. I think God was with me all the while until I availed the chance to escape from him. It has been three years since I escaped from him.

I have developed liking for a Muslim boy and we want to be married. Can we enter into this marriage contract without obtaining divorce from my husband? This I ask because we have not been married in the true sense of the relationship and it was forced upon me at the first place and I never received anything from him not the dowry or any properties not even a wedding ring. I have fear of upon my life from that man.

Answer: I feel real sorry on the plight you are facing. May Allah deliver you from this state and grant you life full of peace and content. You have asked whether you could enter into a new marriage knot without officially breaking the previous one. I am afraid I would not recommend it. Even if you were forced to enter into a marriage contract against all your will they must have got your consent and you must have signed the marriage papers. Now unless you get a divorce from the previous husband you should not enter into a new contract. It would be safe and in conformity with legal and moral principles that you turn to a competent court of justice and file for a divorce. We pray to the Almighty that he smoothes the way for you.

Regarding Five Daily Prayers

Question: When were five daily prayers enjoined upon the believers?

Answer: The prayer in fact has been an important worship ritual in all the divine religions only with slightly different methods. It has always been an obligation for the followers of all

Queries

religious doctrines. It has been promulgated among the followers of Abrahamic religious traditions both Israelite (Jewish and Christian) and the Ishmaelite (descendants of Ishmael sws) as a *Sunnah* of the Prophet (sws) Abraham. Thus we find that the pre-Islamic Arabs would also offer prayers. The Holy *Qur'ān* and the pre Islamic Arabic literature contain ample evidence in this regard. Therefore, we believe that the prayer has been an obligation for the followers of all the divine religions from the beginning. When the Holy Prophet (sws) began preaching Islam and reviving the religious traditions of the Holy Prophet (sws) Abraham in *Makkah* he exhorted his addressees upon establishing the prayer. Historical evidence shows that the timing and form of the prayer has also been almost the same over the history in different religious faiths. Thus we can safely conclude that the prayer has been a necessary obligation for the followers of the divine religion since its conception. We need not find the date on which it was promulgated or held necessary. In the Islamic religious tradition it takes its place as a *Sunnah* of the Prophet (sws) Abraham revised and promulgated by the Holy Prophet (sws) as necessary part of Islam.

**Lord! Guide us to the right path;
the path of those on whom
You have bestowed Your grace.**

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Contents

Editorial

All is Well ...! 3

Shehzad Saleem

Qur'ānic Exegesis

Sūrah Ṭāriq 4

*Amin Ahsan Islahi/
(Tr. by Jhangeer Hanif)*

Scriptures

Original Sin or Purity (Innocence) 12

Abdus Sattar Ghauri

Islamic Law

Divorce 24

*Javed Amad Ghamidi
(Tr. by Shehzad Saleem)*

Book Review

Divorce and Remarriage among Muslims in India 52

Yogindar Sikand

Queries

Meaning of the Term *Shahīd* 55

Jhangeer Hanif

Taking a Small Amount of Alcohol 56

"

Celebrating Birthdays 57

"

Marrying a Hindu Girl 59

"

Wearing Bangles 60

"

Hiding One's Sins 60

"

Offensive Language for the Prophet (sws) 61

"

Marriage without being Divorced 62

"

Regarding Five Daily Prayers 62

"

All is Well ...!

We cannot always grasp the profundity of the Almighty's wisdom. Time, however, often tells how the 'untoward' happening actually positively influences the course of our life. ... *p.3*

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